

9th meeting of the Working Group on EIA and SEA (Espoo Convention)

(Geneva, 24 – 26 August 2020)

Statements by the EU and its Member States

Agenda item 6): Compliance and implementation

6(a) Review of compliance and related draft decisions

The EU and its Member States respect and support the work of the Implementation Committee of the Espoo Convention. We would like to thank all Parties, which contribute by nominating members of the Implementation Committee. We also thank the Secretariat for its continuous support of the Implementation Committee.

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

The EU and its Member States suggest the following remarks to be taken into account by the Implementation Committee when revising the draft decision:

1. Para 5 should be deleted as this information is vague and the Party concerned has not yet been subject of a notification.
2. We consider the information provided in para 6 very important, nevertheless, it should be noted that at least one of the Parties mentioned has not yet been notified of the cases by the Implementation Committee. We would like to point out that the Implementation Committee should notify the Parties concerned as soon as possible and that an explicit reference to a Party in this draft decision without prior notification seems unjustified; reference to the numerous information gathering cases should therefore be made in more general terms - not naming individual Parties - until formal notification by the Implementation Committee of this Party has taken place; the para should be reformulated accordingly. The transmission of the report of the Implementation Committee shall not be considered as a notification in due form.
3. The vocabulary used for para 6 could be revised in order to use the terms validated during the Meeting of the Parties.
4. Concerning Point 9 using a more stringent view than “urge” would be recommended. We invite the Implementation Committee to reconsider this point.

9th meeting of the Working Group on EIA and SEA (Espoo Convention)

(Geneva, 24 – 26 August 2020)

Statement by the EU and its Member States

Agenda item 6): Compliance and implementation

6(c) Reporting and review of implementation

Draft decision VIII/5 on reporting and review of implementation of the Convention

The EU and its Member States thank the Bureau for preparing the draft decision on reporting and review of implementation of the Convention (VIII/5).

We would like to make the following remarks:

- In paragraph 3(c) the term “*express provision*” should be clarified. One suggestion would be to replace the term “*express provision*” with the term “*explicit provision*”;
- Paragraph 3(f) should be amended, so it reads as follows: “*Guidance documents developed to help implement the Convention are being used less frequently; Parties do not see a need to update most of the current documents*”; in the Review of Implementation, only one Party seems to have taken up the issue by suggesting that a review be conducted to ascertain whether there is a need for an update. Parties’ answers, as summarized in the Review, do not give evidence of a broader wish to commissioning additional guidance.
- Paragraph 3(g) should be amended as follows: “*Bilateral and multilateral agreements or other arrangements under Art. 8 can) be useful, in particular to address differences between Parties application practices;*”
- In paragraph 3(i) the first sentence should end after “*documentation*”. It is unclear what “basic measures” are. The second sentence should also be deleted as it only refers to one Party.
- In paragraph 5 the words “*if necessary*” could be inserted twice. The Implementation Committee should adjust the questionnaire only if necessary

Draft Decision IV/5 on reporting and review of implementation of the Protocol

The EU and its Member States would like to thank the Bureau for preparing the draft decision on reporting and review of implementation of the Protocol (IV/5).

We would like to make the following remarks:

- The recital stating observations about the reporting of the European Union should be deleted. The EU reported in time and was the first Party submitting its feedback to the Secretariat. It provided updates on relevant policy and legislative issues. It is not the first time the EU provided its updates in a free format.
- In paragraph 3(a), the word “*majority*” should be replaced by “*some*” and in the last sentence should be deleted. There is no explicit requirement in the Protocol for further definitions. Some Parties may have guidance on this issue other may have implemented the requirements in several material acts, where no further definition is useful. Moreover, the last sentence should be deleted. Unless there is evidence for any impediments in implementing the Protocol in this part a compliance decision is not the source to speculate about “deficiencies”.
- Paragraph 3(b), first sentence should be shortened: “*Some Parties have different approaches whether and how to involve the public in screening and scoping further to articles 5 (3) and 6 (3).*” To involve the public in screening and scoping is not mandatory. This should be reflected in the wording of the decision.
- In paragraph 3(d) the word “*some*” should be inserted before “*consultations*”. Not every consultation is complicated by difficulties arising from Parties’ differing practices.
- In paragraph 3(e) “*might be useful*” should be chosen.
- In paragraph 3(f) the words “*in developing material*” should be deleted. It would be preferable to have a more open formulation, which would allow different options.
- In paragraph 3(h) the first sentence should read as follows: “*Relatively few Parties use the Resource Manual, but it is unclear why the Resource Manual is not used*”. It is not clear why the Resource Manual is not used. Assumptions should be avoided. Moreover, “*a number of*” should be replaced with “*some*”.
- In paragraph 3(i), first line the word “*is*” should be replaced with “*may be*”. The third sentence should be deleted as it is not related to quality control.

- Paragraph 3(j) should be deleted. It is unclear to whom it is addressed and the different monitoring practices do not necessarily lead to difficulties concerning scope and duration of the monitoring. The monitoring systems/practises need to be adjusted to the different plans and programmes at different levels. Monitoring systems depend also on the different planning/programming procedures and their content.
- In paragraph 5 the wording “*if necessary*” should be inserted with regard to the adjustment and the provision of a “*modified version*”. The questionnaires should only be changed if it is really needed.
- Paragraph 6 should be amended so it reads as follows: *Also requests the Implementation Committee to prepare, in consultation with the European Union, represented by the European Commission, a reporting template that fits the nature and the competencies of the European Union.* The EU is the only regional economic integration organization that is Party to the Convention and eventual template for reporting should take into account its nature and competencies it is granted through the founding Treaties.

Note of the Presidency: Detailed comments on item 6(c) are set out in track-changes in the annexed Draft decision VIII/5 and Draft decision IV/5

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EU+MS comments**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****Ninth meeting**

Geneva, 9-11 June 2020

Item 5 (b) and 6 (a) of the provisional agenda

**Promoting ratification and application of the Convention
and the Protocol: draft guidance on assessing health impacts
in strategic environmental assessment,**

Compliance and implementation: reporting and review of implementation

Draft decisions by the Meeting of the Parties to the Protocol**Proposals by the Bureau***Summary*

In accordance with the mandate given to the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment by the Meetings of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context and to the Protocol on Strategic Environmental Assessment, the Working Group is tasked with making recommendations to these governing bodies regarding future work under the Convention and the Protocol (ECE/MP.EIA/SEA/2, decision I/5-V/5, operative para. 4).

In accordance with the above mandate, the present document contains two draft decisions prepared by the Bureau for the Working Group's consideration: a draft decision on reporting and review of implementation of the Protocol (IV/5); and a draft decision on assessing health impacts in strategic environmental assessment (IV/6).

The Working Group is expected to review and agree on the text of the draft decisions to be forwarded for consideration by the Meeting of the Parties to the Protocol at its fourth session (Vilnius, 8-11 December 2020).



Draft decision IV/5

Reporting and review of implementation of the Protocol

The Meeting of the Parties to the Protocol,

Recalling decision I/7–V/7 of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment (Meeting of the Parties to the Protocol) and decisions II/1 and III/1 of the Meeting of the Parties to the Protocol on reporting and the review of implementation,

Recalling also article 14 (4) of the Protocol, concerning the regular review of the implementation of the Protocol,

Recalling further article 14 (7) of the Protocol, on reporting by Parties on measures they have taken to implement the Protocol and article 13 (4) of the Protocol, concerning reporting by Parties on their application of article 13 on policies and legislation,

Recognizing that regular reporting by each Party provides important information that facilitates the review of compliance under the Protocol and thereby contributes to the work of the Implementation Committee,

Recognizing also that Parties' reporting provides useful information to other countries within and beyond the United Nations Economic Commission for Europe (ECE) region that facilitates their efforts to implement and accede to the Protocol,

Having analysed the reports provided by Parties in response to the questionnaire on implementation of the Protocol during the period 2016–2018,

Strongly emphasizing the importance of timeliness and the quality of national reporting,

Expressing concern that the following 15 States Parties –that were Parties to the Protocol during the period under review – responded to the questionnaire late: Bosnia and Herzegovina, Cyprus, Denmark, Germany, Italy, Latvia, Luxembourg, Montenegro, the Netherlands, North Macedonia, Portugal, Serbia, Slovenia, Spain and Ukraine,

~~*Observing that the European Union is a Party to the Protocol, but, being a regional economic integration organization, has, thus far, considered it inappropriate to return a completed questionnaire, providing instead updates regarding relevant European Union legislation,*~~

Expressing appreciation that the Republic of Moldova, the State not Party to the Protocol during the period under review, and Georgia and Kazakhstan, States not Parties to the Protocol, nevertheless responded to the questionnaire,

1. *Welcomes* the reports by Parties on their implementation of the Protocol during the period 2016–2018, which have been made available on the treaty website;

2. *Adopts* the third review of implementation of the Protocol as contained in document ECE/MP.EIA/SEA/2020/[8], and requests the secretariat to arrange for its publication in an electronic form in all three official languages of ECE;

3. *Notes* the findings of the third review of implementation of the Protocol, including the following possible weaknesses or shortcomings and areas for further improvement in the implementation of the Protocol by Parties:

(a) A variety of approaches exist to interpreting the term “set the framework for future development consent” referred to in article 4 (2) of the Protocol, with ~~the majority~~ ~~some of the~~ Parties having no explicit definition of this term in their domestic legislation; the Parties also experience difficulties in interpreting the provisions of article 4 (4), in particular

the terms “small areas at local level” and “minor modifications”. ~~These deficiencies might have the potential to cause problems, particularly if the consequence is a lack of clarity about which plans and programmes fall within the scope of the Protocol;~~

(b) The Parties’ legislation and practice continue to differ considerably regarding the opportunities provided to the public concerned to participate in screening and scoping further to articles 5 (3) and 6 (3), ~~respectively, of the Protocol, which might complicate the Protocol’s implementation. Seven Parties report an absence of legislative provisions for the public concerned to participate in screening and/or scoping, while six Parties indicate that such opportunities are provided during scoping only;~~

(c) Some Parties seem to find it difficult to appropriately address health aspects and impacts in strategic environmental assessment[s]. Parties may wish to consult the section on health in the Resource Manual to Support Application of the UNECE Protocol on Strategic Environmental Assessment¹ (Resource Manual) [and the Guidance on Assessing Health Impacts in Strategic Environmental Assessment ECE/MP.EIA/SEA/2020/[X] forthcoming], for further information on the matter;

(d) ~~Some c~~Consultations are complicated by difficulties arising from Parties’ differing practices in relation to the translation of documentation during transboundary consultations, in particular concerning the quality of, and time and resources required for, the translation, and with regard to the integration of the translation into time schedules for consultations and public participation;

(e) Further bilateral agreements or other arrangements to facilitate transboundary consultations between Parties ~~[continue to be called for]~~ [might be useful], in particular to increase efficiency and to address differences between Parties’ implementation practices, including language-related issues, time frames, public participation, the interpretation of various terms and the organization of transboundary consultations;

(f) A wide range of implementation practices and experiences are reported by the Parties and this information could be used ~~in developing material~~ to enhance implementation. As no Parties volunteer to provide case studies, consideration might be given to the ways in which ECE can facilitate the creation of such material;

(g) Many Parties continuously fail to fulfil their obligation to report (in accordance with art. 14 (7)) in a timely manner;

(h) Relatively few Parties use the Resource Manual but it is unclear, ~~why the Resource Manual is not used~~ ~~whether this is due to a need to update or complement all or parts of the Resource Manual. At the same time, a number of Some~~ Parties requested that the current version of the Resource Manual be translated into their national languages.

(i) Ensuring quality of the environmental reports ~~is—~~ may be an area of improvement in the application of the Protocol. Promoting use of quality control approaches could be recommended. ~~Parties have also expressed the desire for adequate explanations to be provided of how the comments received in accordance with articles 8 to 10 have been taken into account;~~

~~(j) Differing monitoring practices are applied to implement article 12 of the Protocol, resulting to difficulties concerning the scope and duration of monitoring, monitoring measures and the use of indicators.~~

4. Requests the secretariat to bring to the attention of the Implementation Committee general and specific compliance issues identified in the third review of implementation, and requests the Implementation Committee to take these into account in its work;

5. Requests the Implementation Committee to adjust if necessary the questionnaire for the next reporting round on Parties’ implementation of the Protocol in the period 2019–2021, taking into account the suggested improvements to the questionnaires on the implementation of the Protocol, and to provide if necessary a modified version for

¹ United Nations publication, ECE/MP.EIA/17.

consideration by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment and for circulation by the secretariat thereafter;

6. Also requests the Implementation Committee to prepare, in consultation with the European Union, represented by the European Commission, a reporting template that fits to fit the nature context and the competencies of regional economic integration organizations, including the European Union, to facilitate their reporting under article 13 (4) of the Protocol;

7. Decides that Parties to the Protocol shall complete the questionnaire as a report on their implementation of the Protocol during the period 2019–2021, taking note of the obligations to report arising from articles 14 (7) and 13 (4) of the Protocol;

8. Urges Parties to report by the deadline to be agreed by the Working Group;

9. Requests the secretariat to post national reports on the treaty website in the languages in which they are available;

10. Also requests the secretariat to post the lists of domestic and transboundary strategic environmental assessment cases included in the responses to the questionnaire on the treaty website, unless the Parties object to this practice;

11. Decides that a draft fourth review of implementation of the Protocol during the period 2019–2021 based on the reports by Parties will be presented at the fifth session of the Meeting of the Parties to the Protocol, and that the workplan shall reflect the elements required to prepare the draft fourth review;

12. Requests the secretariat to post the draft fourth review of implementation of the Protocol on the treaty website;

13. *Also requests* the secretariat to foresee the subsequent publishing of the fourth review of implementation, once adopted, in an electronic format in the three official languages of ECE.

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EU+MS comments**Economic Commission for Europe**

Meeting of the Parties to the Convention
on Environmental Impact Assessment
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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****Ninth meeting**

Geneva, 9–11 June 2020

Item 6 (a) and (e) of the provisional agenda

**Compliance and implementation: reporting and review of implementation,
draft guidance on the applicability of the Convention to the lifetime extension
of nuclear power plants**

**Draft decisions by the Meeting of the Parties to the
Convention****Proposals by the Bureau***Summary*

In accordance with the mandate given to the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context and the Meeting of the Parties to the Protocol on Strategic Environmental Assessment, the Working Group is tasked with making recommendations to these governing bodies regarding future work under the Convention and the Protocol (ECE/MP.EIA/SEA/2, decision I/5–V/5, operative para. 4).

In accordance with the above mandate, the present document contains two draft decisions prepared by the Bureau for the Working Group's consideration: a draft decision on reporting and review of implementation of the Convention (VIII/5); and a draft decision on the applicability of the Convention to the lifetime extension of nuclear power plants (VIII/6).

The Working Group is expected to review and agree on the text of the draft decisions to be forwarded for consideration by the Meeting of the Parties to the Convention at its eighth session (Vilnius, 8–11 December 2020).



Decision VIII/5

Reporting and review of implementation of the Convention

The Meeting of the Parties to the Convention,

Recalling its decisions III/1, IV/1 and V/3 on the review of implementation, and decisions V/7–I/7, VI/1 and VII/1 on reporting and the review of implementation,

Recalling also article 14 bis of the Convention on Environmental Impact Assessment in a Transboundary Context, which requires Parties to report on their implementation of the Convention,

Recognizing once again that regular reporting by each Party provides important information that facilitates the review of compliance under the Convention and thereby contributes to the work of the Implementation Committee,

Recognizing that Parties' reporting provides useful information to other countries within and beyond the United Nations Economic Commission for Europe (ECE) region that facilitates their efforts to implement and accede to the Convention,

Having analysed the reports provided by Parties in response to the questionnaire on the implementation of the Convention,

Strongly emphasizing the importance of the timeliness and the quality of national reporting,

Expressing concern that the following 23 States Parties – which were Parties to the Convention during the period under review – responded to the questionnaire late: Azerbaijan, Belarus, Bosnia and Herzegovina, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Kazakhstan, Latvia, Liechtenstein, Luxembourg, Montenegro, North Macedonia, Netherlands, Portugal, Serbia, Slovenia, Spain and Ukraine,

[Observing that the European Union is a Party to the Convention, but, being a regional economic integration organization, has, thus far, felt it inappropriate to return a completed questionnaire, providing instead updates regarding relevant European Union legislation,]

Expressing appreciation that Georgia, the State not Party to the Convention, nevertheless responded to the questionnaire,

1. *Welcomes* the reports by Parties on their implementation of the Convention during the period 2016–2018, which have been made available on the Convention website;

2. *Adopts* the sixth review of implementation of the Convention (ECE/MP.EIA/2020/[8]) and requests the secretariat to arrange for its publication in an electronic format in all three official languages of ECE;

3. *Notes* the findings of the sixth review of implementation, including the following possible weaknesses or shortcomings in the Convention's implementation by Parties:

(a) Parties' definitions of and approaches to key terms in the Convention, such as "impact", "transboundary impact" and "major change", differ, with a few Parties not defining some of these terms in their national legislation. This may lead to potential problems, particularly if the consequence is a lack of clarity about which proposed activities fall within the scope of the Convention (arts. 1 and 6);

(b) Slightly more than 50 per cent of the Parties have made obligatory provisions for transboundary consultation with the authorities of affected Parties according to article 5, with nine Parties having no provisions in this regard in their domestic legislation;

(c) Only a minority of Parties have ~~an express explicit~~ provision in their legislation on how to ensure application of article 6 (3), which requires that concerned Parties be updated on additional information that may trigger consultations and a new decision before work on an activity commences;

(d) There is only rudimentary experience in carrying out post-project analysis under article 7, with eleven Parties having no express provisions implementing this article in their legislation;

(e) Differing practices exist in relation to the translation of documentation for affected Parties. A number of difficulties and concerns are raised by the Parties about such practices, in particular concerning the quality of translations and proper integration of translation into time schedules for consultations and public participation;

(f) Guidance documents developed to help implement the Convention are being used less frequently; ~~Parties do not see a need to update most of the current documents; one Party recommends that these documents be updated. The value of commissioning additional guidance could also be assessed;~~

(g) ~~There is a need for bilateral and multilateral agreements or other arrangements under article 8, in particular to address differences between Parties' application practices;~~ Bilateral and multilateral agreements or other arrangements under Art. 8. can be useful, in particular to address differences between Parties application practices;

(h) A lack of timely reporting by Parties complicated the review;

(i) Different quality control measures are used by the Parties to ensure the quality of environmental impact assessment documentation, ~~with a majority of Parties referring only to basic measures. One Party places responsibility for ensuring that the documentation meets the required quality standard on the applicant. Consideration of more elaborate tools for quality control might be recommended;~~

(j) A wealth of implementation practices and experiences are reported, but few Parties volunteer to share their good practices by preparing factsheets. Consideration might be given to the ways in which the ECE can facilitate the collection of such practices to help develop material to enhance the Convention's implementation.

4. *Requests* the secretariat to bring to the attention of the Implementation Committee general and specific compliance issues identified in the sixth review of implementation of the Convention, and requests the Implementation Committee to take these into account in its work;

5. *Requests* the Implementation Committee if necessary to adjust the questionnaire for the next reporting round on Parties' implementation of the Convention in the period 2019–2021, taking into account the suggested improvements to the questionnaire on the implementation of the Convention, and to provide if necessary a modified version for consideration by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment and for circulation by the secretariat thereafter;

6. *Also requests* the Implementation Committee to prepare a reporting template to fit the context and competencies of regional economic integration organizations, including the European Union, to facilitate their reporting under article 14 bis of the Convention;

7. *Decides* that *Parties* shall complete the questionnaire as a report on their implementation of the Convention during the period 2019–2021;

8. *Urges* Parties to report by the deadline to be agreed by the Working Group;

9. *Requests* the secretariat to post national reports on the Convention website in the languages in which they are available;

10. *Also requests* the secretariat to put the project lists included in the responses to the questionnaire on the Convention website, unless the countries object to this practice;

11. *Decides* that a draft seventh review of implementation of the Convention during the period 2019–2021 based on the reports by Parties will be presented at the ninth session of Meeting of the Parties to the Convention, and that the workplan shall reflect the elements required to prepare the draft review;

12. *Requests* the secretariat to foresee the subsequent publication of the seventh review of implementation, once adopted, in an electronic format in all three official languages of ECE.
