

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

Third meeting

Geneva, 11-15 November 2013

Item 3 of the provisional agenda

Compliance and implementation

Amendments to the Committee's structure and functions and operating rules

Initial draft proposal by the Implementation Committee¹

This note presents an initial draft by the Implementation Committee with proposed changes to the Committee's structure and functions, and operating rules. The Committee considered the issue at its twenty-eighth session (10-12 September 2013) and subsequently elaborated on its draft electronically. The Chair of the Committee will present the initial draft proposal to the Working Group on environmental impact assessment (EIA) and strategic environmental assessment (SEA) for its information at its third meeting (Geneva, 11–15 November 2013). The Working Group may wish to comment the draft proposals. Proposed additions to the existing text are presented in **bold**.

The Committee will then continue its consideration of the draft proposals with a view to finalizing them at its subsequent sessions for the sixth session of the Meeting of the Parties to the Convention (MOP-6) and the second session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (MOP/MOP-2) in June 2014. The final version of the proposals will be annexed to the MOP decision on the review of compliance of the Convention and the Protocol.

¹ The present note has been prepared by the members of the Implementation Committee under the Convention on Environmental Impact Assessment (EIA) and its Protocol on Strategic Environmental Assessment (SEA) and is a working document under discussion by the Committee. The UNECE secretariat servicing the body has facilitated the preparation of the document for its submission to the Working Group on EIA and SEA for information. The views expressed herein are not necessarily those of the UNECE.

I. Introduction

1. The Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) decided at its fifth session 20–23 June 2011 to “keep under review and to develop if necessary the structure and functions of the Implementation Committee as well as its operating rules at the sixth session of the Meeting of the Parties in the light of experience gained by the Committee in the interim, including recommendations to the Meeting of the Parties on the imposition of sanctions for non-compliance, and in this context requests the Committee to prepare any necessary proposals for the sixth session of the Meeting of the Parties (decision V/4, para.15, EIA/MP.EIA/15).

2. At its twenty-third and twenty-fourth sessions, (held on 5–7 December 2011 and 20–23 March 2012, respectively),² the Implementation Committee made proposals to clarify the Committee’s structure, functions and its operating rules regarding the following issues:

- (a) Decision-making;
- (b) Participation in the Committee sessions;
- (c) The roles of Committee members nominated for Protocol or Convention matters only.

3. At its twenty-seventh session (12–14 March 2013)³, the Committee agreed that the issues to be further developed or clarified should also include the following:

- (a) Requirements regarding information from Parties, (e.g., the Committee should accept only original documents and their English translations and not weblinks);
- (b) Electronic decision-making;
- (c) Eligibility of Committee members, in case of a finding on non-compliance.

4. At that meeting, the Committee invited the curators, with the assistance of the secretariat, to prepare for its twenty-eighth session (10–12 September 2013) a draft document with proposals on all the above matters. At its session in September, the Committee held initial discussions on the proposals and decided to continue their development electronically and at its subsequent sessions with a view to their finalization for adoption by the Meeting of the Parties to the Convention at its sixth session and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol at its second session (Kiev, 2–5 June 2014). The proposals will be submitted to the Meetings of the Parties as an annex to the draft decisions on the review of compliance (see elements of the draft decisions in ECE/MP.EIA/WG.2/2013/INF.3)

5. Sections II and III below provide elements for the Committee’s draft proposals for amendments to its structure and functions and operating rules for information by the Working Group on EIA and SEA at its third meeting (11–15 November 2013). The excerpts of the reports of the Committee are also included, where relevant.

² ECE/MP.EIA/IC/2011/8 and ECE/MP.EIA/IC/2012/2.

³ See the report of the Committee on its twenty-seventh meeting, ECE/MP.EIA/IC/2013/2, paras. 35–38).

II. Proposals for amending the structure and functions of the Implementation Committee

A. Membership in the Committee – alternate members (para. 1)

(a) Proposed amendment

6. Amend paragraph 1 (a) as follows:

1. (a) The Committee shall consist of eight Parties.⁴ Each of the eight Parties shall appoint a member **and an alternate member of the Committee. To ensure continuity of the Committee’s discussions, Parties shall ensure that the members participate in all Committee’s sessions and alternate members in exceptional circumstances only (see also the Committee’s operating rule 4, para. 2).** At their second meeting, the Parties elected four Parties to the Committee for two terms and four Parties for one term. At each session thereafter, the Meeting of the Parties shall elect four new Parties for two terms. Outgoing Parties may be re-elected once, unless in a given case the Meeting of the Parties decides otherwise. The Committee shall elect its own Chair and **two Vice-Chairs;**

(b) Rationale for the proposal

7. Bearing in mind decision V/6-I/6 on the application of the compliance procedure of the Convention to the Protocol on SEA, references in the Committee’s structure and functions to the Convention and to the Meeting of the Parties to the Convention, are to be understood as references to the Protocol and to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol.

8. In case the elected members represent Parties to Convention that are not yet Parties to the Protocol, the Parties to the Protocol shall elect the necessary number of additional Parties for the Protocol matters, to serve a for the same term. The total number of Parties members to the Committee should preferably not exceed twelve (decision V/6-I/6, para. 3).

9. Additionally, to carry out its functions, the Committee considers it important that all Parties are present in all of its meetings to ensure the legitimacy of decisions taken by the Committee and to share the Committee’s heavy workload. Based on the past experience, the Committee is concerned that the rule 4, paragraph 2 of the Committee’s operating rule which states that “if in exceptional cases a member was unable to participate in a Committee session, the respective Party should make all efforts to provide a suitable replacement for that member for the session, informing the Chair and the secretariat accordingly well in advance” is not sufficient to guarantee the presence of all Parties in each session. It is therefore proposed that at the Meetings of the Parties, Parties also appoint alternate members. To ensure continuity of the Committee’s discussions, elected Parties should ensure that they are represented through their principal members at all Committee meetings and through their alternate members in exceptional circumstances only, when it is

⁴ In accordance with decision V/6-I/6 on the application of the compliance procedure of the Convention to the Protocol on Strategic Environmental Assessment, references in the Committee’s Structure and functions to the Convention and to the Meeting of the Parties to the Convention, shall be understood as references to the Protocol and to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol. In line with paragraph 2 of that decision where review of compliance of the Protocol is concerned, the Committee should consist of eight Parties to the Protocol. In case the elected members represent Parties to Convention that are not yet Parties to the Protocol, the Parties to the Protocol shall elect the necessary number of additional Parties for the Protocol matters, to serve a for the same term

impossible for the appointed main members to participate. This means that Parties avoid that their principal and alternate members rotate in their participation in the Committee's sessions.

B. Participation in the Committee's sessions (paras. 3, 9 and 10)

Meetings

(a) Proposed amendments

10. Amend paragraph 3 as follows:

3. Its meeting shall be open to other Parties and the public, unless the Committee decides otherwise. Parts of meetings dealing with **any matter concerning** specific submissions relating to compliance, **including the respective item of the agenda**, shall not be open to other Parties or to the public, unless the Committee and the Party whose compliance is in question agree otherwise.

(b) Rationale for the proposal

11. Based on the experience of the Committee and due to the fact that the text of this paragraph wording may allow for different interpretations, the amendment seeks to provide further clarification and ensure consistent interpretation and practice.

Entitlement to participate

12. Amend the section title to "**Entitlement to present information and opinions**"

(a) Proposed amendments

13. Amend paragraphs 9 and 10 as follows:

9. **At the invitation of the Committee**, a Party in respect of which a submission is made or which makes a submission shall be entitled to ~~participate in, or be present during, the consideration by the Committee of~~ **attend the Committee's session, and present to the Committee information and opinions on** that submission, but shall not take part in the **consideration of the matter, including the** preparation and adoption of ~~any report~~ the findings and ~~or~~ recommendations of the Committee. The Committee shall decide on the content of any report or recommendations by consensus, send a copy of the draft report or recommendations to the Parties concerned, and shall take into account any representations from such Parties in the finalization of the report (**see also operating rule 11, para. 2**).

10. A member of the Committee that represents a Party in respect of which a submission is made or which makes a submission shall ~~be entitled to not participate in, or be present during,~~ the consideration by the Committee of that ~~submission but shall not participate in, or be present during, including~~ the preparation and adoption of any part of ~~a report~~ the findings or recommendations of the Committee ~~that relates~~ **relating** to that submission (**see also operating rule 17 para. 2**).

(b) Rationale for the proposal

14. It is the view of the Committee that the existing rules are not clear with respect to the Parties' participation in the Committee meetings. The proposed amendments aim to better reflect the mode of operation of the Committee in its consideration of submissions (see also Rule 11 para. 2, as well as Rule 17, para. 2).

III. Proposals for amending the operating rules of the Implementation Committee

A. Preamble

(a) Proposed amendment

15. Add the following paragraphs in the preamble:

When the Protocol on Strategic Environmental Assessment entered into force, the fifth meeting of the Parties to the Convention and the first meeting of the Parties of the Convention serving as the meeting of the Parties to the Protocol adopted decisions V/6-I/6 on the application of the compliance procedure of the Convention to the Protocol according to which references in the Committee's Structure and functions to the Convention and to the Meeting of the Parties to the Convention, shall be understood as references to the Protocol and to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol.

(b) Rationale for the proposal

16. The proposed amendment aims to incorporate the operation of the Committee further to the adoption of MOP decisions V/6-I/6.

B. Purposes - Decision-making (Rule 2)

(a) Proposed amendment

17. Amend Rule 2 to include explicit reference to Rule 37 if decision I/1 (Rules of Procedure), as follows:

The following rules of procedure of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, should apply, mutatis mutandis, to any meeting of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context, except as otherwise provided in the rules set out herein and in the appendix to decision III/2: rule 3 (Place of meetings); rules 12 and 13 (Agenda); rules 20 to 22 (Officers); rules 24 and 25(c) (Secretariat); rules 28 and 30 to 35 (Conduct of business), except rule 32, paragraph 2; and **rules 38 37** to 46 (Voting).

(b) Rationale for the proposal

18. The amendment aims to address the issues encountered by the Committee in the interpretation of the rules during the past intersessional period and to avoid similar situations in the future, which may obstruct the substance of its work. In particular, at its twenty-third session:

“Committee members pointed out that a distinction should be made between three different procedural elements. In line with paragraph 12 of the structure and functions of the Committee on the competence of the Committee, considering that two Committee members represented involved Parties, the overall size of the Committee for discussing the submissions regarding those Parties had been reduced to six members, which remained sufficient. A quorum, on the other hand, related to the presence of Committee members at its meetings. As the Committee's operating rules (ECE/MP.EIA/10, decision IV/2, annex IV) and structure and functions did not define a quorum, the general rules of procedure of the Convention (ECE/MP.EIA/2,

annex I, decision I/1) applied. According to rule 23, paragraph 5, of the rules of procedure, one quarter of the Parties (i.e. one quarter of the members of the Meeting of the Parties and its subsidiary bodies) constituted a quorum, which in the case of the Committee would mean two out of eight members when considering Convention matters. Finally, the third element was the decision-making procedure regulated by rule 18 of the Committee's operating rules, which stated that, in the absence of a consensus, the decision should be taken by a majority vote, provided that at least five members were present." (ECE/MP.EIA/IC/2011/8 paragraph 6.)

C. Definitions (Rule 3)

(a) Proposed amendment

19. Add a new paragraph (b) as follows and subsequently renumber paragraphs (b) to (j) as (c) to (k):

(b) "Protocol" means the Protocol on Strategic Environmental Assessment to the Convention, adopted in Kiev (Ukraine) on 21 May 2003;

(b) Rationale for the proposal

20. The proposed amendment aims to incorporate the operation of the Committee further to the adoption of MOP decisions V/6-I/6.

D. Members (Rule 4)

(a) Proposed amendment

21. Amend Rule 4 paragraphs 1 and 2 as follows:

1. The Meeting of the Parties should elect Parties for serving two terms in the Committee. Each Party elected by the Meeting of the Parties should appoint a member of the Committee for two terms. **Each Party elected by the Meeting of the Parties should also appoint an alternate member for two terms.** The term of office of a member shall commence with the appointment by a Party. This paragraph should apply without prejudice to the right of a Party elected by the Meeting of the Parties to appoint in exceptional cases a permanent replacement for **the member or the alternate member** ~~that member~~.

2. Members are expected to participate in every meeting of the Committee. If in exceptional cases a member is unable to participate in a meeting of the Committee, **the alternate member should participate and the Party should inform the Chair and the secretariat accordingly well in advance of the meeting. To ensure continuity of the Committee's deliberations, Parties avoid rotation of the members and alternate members in a Party's participation in the Committee meetings. If the alternate member is also unable to participate,** the respective Party should make all efforts to represent it for that ~~provide a suitable replacement of that member for the~~ meeting of the Committee, informing the Chair and the secretariat accordingly well in advance of the meeting.

(b) Rationale for the proposal

22. See rationale in Section II (A) above.

E. Members - Roles of the Committee members nominated for Protocol or Convention matters (Rule 4)

(a) Proposed amendment

23. In Rule 4, add new paragraph 4, as follows:

4. Committee member elected for Protocol matters only, may participate in the consideration of an issue relating to compliance with the Convention, provided that there is no objection by a Committee member elected for Convention matters. A Committee member elected for Protocol matters only should not take part in decision-making concerning Convention matters and should not act as curator for an issue relating to compliance with the Convention, but might provide information, opinions and advice. This rule should be applied mutatis mutandis in the case of a Committee member elected for Convention matters only, but representing a Party to both the Convention and the Protocol. Further, this rule should be applied without prejudice to paragraphs 10 (entitlement to participate) and 12 (competence) of the structure and functions of the Committee and procedures for review of compliance, and without prejudice to the Committee's operating rules 5 (members) and 18 and 19 (decision-making).

(b) Rationale for the proposal

24. The proposal aims to reflect the Committee's conclusions at its twenty-fourth session (20-23 March 2012) and the operating practice established thereafter. Specifically, with a view to making the best use of the substantial expertise of all of its members, the Committee at that session, agreed on the following rule regarding participation at its sessions:

“A Committee member elected for Protocol matters only, but representing a Party to both the Convention and the Protocol, may participate in the consideration of an issue relating to compliance with the Convention, provided that there is no objection by a Committee member elected for Convention matters. A Committee member elected for Protocol matters only should not take part in decision-making concerning Convention matters and should not act as curator for an issue relating to compliance with the Convention, but might provide information, opinions and advice. This rule should be applied mutatis mutandis in the case of a Committee member elected for Convention matters only, but representing a Party to both the Convention and the Protocol. Further, this rule should be applied without prejudice to paragraphs 10 (entitlement to participate) and 12 (competence) of the structure and functions of the Committee and procedures for review of compliance, and without prejudice to the Committee's operating rules 5 (members) and 18 and 19 (decision-making).

The Committee decided to apply the rule starting from the current session. To ensure transparency, the Committee agreed that the approach would be shared with the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its first session (24–26 April 2012).” (ECE/MP.EIA/IC/2012/2 paragraph 6)

F. Members and participation in meetings (Rule 5 and Rule 17)

(a) Proposed amendment

25. In Rule 5, amend paragraph 2, as follows:

2. A member that represents a Party in respect of which a submission is made or which makes a submission should ~~be entitled to not~~ participate in the consideration by the Committee of that submission ~~but and~~ should not participate in, or be present during, the preparation and adoption of any part of a report, finding or recommendation of the Committee that relate s to that submission. This paragraph should be applied, mutatis mutandis, in the case of a Committee initiative.

26. In Rule 17, amend paragraph 2, as follows:

2. A Party in respect of which a submission is made or which makes a submission ~~shall not should be entitled to~~ participate in, or be present during, the consideration by the Committee of that submission, ~~including but should not take part in~~ the preparation and adoption of any ~~part of the report,~~ findings or recommendations of the Committee **relating to that submission (see also para. 10 of the structure and functions).**

(b) Rationale for the proposal

27. The proposed amendment seeks to broadly address the Committee's interpretation at its twenty-second meeting (5-7 September 2011). Accordingly:

53. The Chair, the other Committee members and the secretariat clarified at some length the Committee's structure and functions and the procedure for the review of compliance (decision III/2, appendix), its operating rules (decision IV/2, annex, as amended by decision V/4, annex) and the rules of procedure of the Meeting of the Parties to the Convention (decision I/1). Based on the above rules and in the light of prior practice, the Committee concluded that there were four possibilities for participation in a meeting of the Committee besides the regular participation of the Committee members. Those were the following:

(a) Observers, who had the right to participate in the meeting unless the Committee decided otherwise. Observers were not permitted to remain in the meeting during the Committee's consideration of submissions, unless the Committee and the Party whose compliance was in question agreed otherwise (decision III/2, appendix, para. 3 and decision IV/2, annex, rule 17, para. 1);

(b) Experts invited by the Committee to be present under specific agenda items or sub-items, who were invited to speak by the Chair in agreement with the Committee (decision III/2, appendix, para. 7 (d));

(c) Representatives of Parties in respect of which a submission was made or which made a submission, which were entitled to participate or to be present during the consideration by the Committee of that submission. Such representatives were not permitted to take part in the preparation and adoption of any report or recommendation of the Committee. Representatives of involved Parties might be invited to speak by the Chair in agreement with the Committee, in accordance with the relevant Committee procedures (decision III/2, appendix, para. 9 and decision IV/2, annex, rule 17, para. 2).

G. Officers (Rule 6)

(a) Proposed amendment

28. Amend Rule 6, paragraph 1, as follows:

The Committee should elect a Chair **and two (first and second)** Vice-Chairs for one term. They should serve in those capacities until their successors are elected. The Chair and Vice-Chairs could be re-elected. If an officer resigns during, or is

unable to complete, his or her term of office, the Committee should elect a successor until the end of the term.

(b) Rationale for the proposal

29. Due to the increasing workload and to ensure continuity of its work in case of absence of the Chair during the mandate, the Committee considers it important that the Chair is assisted by two Vice-Chairs in carrying out his/her tasks.

H. Procedures for submissions – presentation of information to the Committee (Rule 11)

(a) Proposed amendment

30. Amend Rule 11, paragraph 2, add a new paragraph 3, renumber current paragraph 3 as paragraph 4, and add new paragraphs 5, 6 and 7, as follows:

2. When it is known that the Committee will discuss the matter of any submission at a particular meeting, the secretariat should notify the Parties involved that the matter will be discussed as well as of their right ~~to participate in the discussion and~~ to present to the Committee information and opinions on the matter under consideration.

3. The Committee should not begin to prepare and adopt any finding or recommendation that relates to a submission at any meeting that takes place before the Party in respect of which a submission is made or makes a submission, at the invitation of the Committee, present their views on the submission before the Committee.

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

5. Information presented to the Committee should be as concise and concrete as possible. Parties should avoid including information that is not strictly necessary to establish the existence and nature of the alleged non-compliance; to respond to the allegations or to the Committee's requests for additional information. If the information is inevitably lengthy due to the complexity of the matter and the volume of the related information, it is recommended that Parties include a three-page (maximum) summary with the main facts and/or arguments of their position.

6. Parties are requested to submit any information to the Committee through the secretariat. The information should be submitted in electronic form, and as relevant, by sending original copies subsequently by post.

7. The information should consist of original documents and their English translation. The Committee may choose not to consider documentation referred to by the Parties via weblinks.

(b) Rationale for the proposal

31. Based on its experience so far, the proposal aims to provide further clarification in that rule, in particular as regards the information flow to the Committee. This is also in accordance with the Committee's decision at its twenty-seventh meeting that among the issues to be further developed in its operating rules were the requirements regarding information from Parties, e.g., the Committee should accept only original documents and their English translations and not weblinks.

I. Procedures for submission - sanctions for non-compliance (Rule 12)

(a) Proposed amendment

32. Amend Rule 12, paragraph 2, to modify paragraph (e) and add paragraphs (f) and (g):⁵

(e) In ~~exceptional~~ circumstances **of persistent non-compliance since the last Meeting of the Parties**, a recommendation to the Meeting of the Parties to suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention **and the Protocol, including the possibility to appoint a member to the Implementation Committee.**

(f) **A recommendation to the Meeting of the Parties to instruct the Bureau to inform the international financial institutions about the issuance of a declaration of non-compliance, the issuance of a caution or the suspension of the special rights and privileges, according to paragraphs (d) and (e) above;**

(g) **A recommendation to the Meeting of the Parties to instruct the secretariat to publish the information about the non-compliance by a Party, on the Convention web site.**

(b) Rationale for the proposal

33. The proposal aims to address the request of MOP5 to the Committee to prepare any necessary proposals for MOP6 in relation, among others, to the imposition of sanctions for non-compliance. In the light of the experience gained so far by the Committee, the proposal aims to improve the effectiveness of the mechanism.

J. Decision making – use of electronic means (Rule 19)

(a) Proposed amendment

34. Amend Rule 12, paragraph 2, to modify paragraph (e) and add paragraphs (f) and (g):

In between meetings, electronic means of communication might be used by the members for the purpose of decision-making and of conducting informal consultations on issues under consideration. Decisions could only be taken by electronic means of communication, ~~if the issue is urgent, if no member opposes using such means in a particular case, and~~ if all eight members participate in decision-making by submitting to the Chair and the secretariat their vote or **abstention within the set deadline by the secretariat in consultation with the Chair, or by not replying at all within ten days to the Chair's request for decision-making by electronic use of communication informing the Chair and the secretariat that they are abstaining from voting.** Any decisions taken by electronic means of communication should be reflected in the report of the meeting of the Committee that follows the taking of the decision.

(b) Rationale for the proposal

35. The proposal is based on the Committee's experience so far, and reflects the Committee's decision at its twenty-seventh meeting that among the issues to be further developed in its operating rules was electronic decision-making.

⁵ Objections expressed by one Committee member.