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

Twelfth meeting
Geneva, 13–15 June 2023

Item 5 (a) of the provisional agenda

Compliance and implementation:
Review of compliance and related draft decisions

**Initial draft decisions on the review of compliance with the Convention and the Protocol (unedited)**

Prepared by the Implementation Committee

**Summary**

This document contains a non-exhaustive compilation of initial, unedited, versions of draft decisions on compliance with the Convention on Environmental Impact Assessment in a Transboundary Context and the Protocol on Strategic Environmental Assessment prepared by the Implementation Committee under the two treaties at its fifty-fifth and fifty-sixth sessions (Geneva (online), 31 January – 3 February 2023) and (Geneva, 2-5 May 2023), respectively. The draft decisions are submitted for information and possible comments by the delegations at the present meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment. A few further draft decisions that will be prepared for consideration of the Meeting of the Parties but could not be tabled for information of the Working Group, due to new last-minute information or still missing information affecting their contents and requiring further consideration by the Committee.

Delegations may wish to submit comments to the draft decisions contained in the present document in writing by 23 May 2023 for the secretariat to publish on the meeting webpage as well as to present them orally during the meeting. After the meeting, the Committee will finalize the draft decisions at its fifty-seventh session (Geneva, 29 August - 1 September 2023) considering the possible comments and any other information received, as it deems appropriate, prior to forwarding the draft decisions as official documents for consideration of the Meetings of the Parties at their next sessions (Geneva, 12-15 December 2023).
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I. Draft decisions on compliance with the Convention and the Protocol

1. Draft decision IX/4a-V/4a on compliance by Albania with its obligation under the Convention and the Protocol with respect to the planned construction of several small hydropower plants on the Cijevna River

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 (Meeting of the Parties to the Protocol),

Recalling article 11, paragraph 2 and article 14 bis of the Convention on Environmental Impact Assessment in a Transboundary Context and article 14, paragraph 4 of the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context,

Recalling further decisions IX/41 on general issues of compliance with the Convention adopted at the ninth session of the Meeting of the Parties to the Convention and V/42 on general issues of compliance with the Protocol, respectively, adopted at the fifth session of the Meeting of the Parties to the Protocol,

Having considered the findings and recommendations of the Implementation Committee on compliance by Albania with its obligation under the Convention and the Protocol with respect to the planned construction of several small hydropower plants on the Cijevna River, as set out in document ECE/MP.EIA/IC/2023/9,

[Having also considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning Albania],

1. Welcome the steps taken by Albania and Montenegro to enter, further to article 2 (5) of the Convention, into discussions on whether the proposed activities by Albania referred to in the submission by Montenegro of 25 September 2019 were likely to cause a significant adverse transboundary impact;

2. Establish that, in discussions under article 2 (5) of the Convention, Parties should exchange information in a way that allows them to identify if significant adverse transboundary impacts on the environment could occur and that both the Party of origin and the affected Party is responsible for the timeliness and quality of their information exchange;

3. Endorse the findings of the Implementation Committee that, in accordance with the information provided to the Committee:

(a) Albania and Montenegro properly fulfilled their obligations under article 2(5) of the Convention by entering into discussion with each other on the matter;

(b) In the absence of an agreement by the concerned Parties under article 2(5), Albania was not in non-compliance with article 2(2) and (6) of the Convention as those provisions were not applicable;

(c) Albania was not in non-compliance with article 10 of the Protocol as in the absence of a plan or a programme by Albania in the meaning of article 4 (1) of the Protocol, the Protocol was not applicable;

4. Encourage both Parties to continue their dialogue under article 2(5) of the Convention, ensuring that the cumulative impact of the proposed activities is properly
assessed, and the criteria listed in appendix III of the Convention are properly applied during the assessment, including with regard to the environmental sensitivity of the Cijevna River basin;

5. Invite Albania to continue to provide Montenegro with information on all planned activities at the Cijevna River referred to in the submission for the purposes of the assessment of their transboundary impacts;

6. Invite Montenegro to provide Albania with any further reasonably obtainable information relating to the potentially affected environment from the proposed activities, if requested;

7. Acknowledge that Albania expressed its willingness to apply the Convention should it, as a result of the discussions under article 2(5), agree that the activities in question cause significant adverse transboundary impacts;

8. Encourage Albania to take into account, in the context of any future assessment of transboundary environmental impacts of any further small hydropower plants in the Cijevna River, the cumulative impact from all existing and planned hydropower plants and to provide the related information to Montenegro;

9. Encourage also Montenegro to provide Albania with any reasonably obtainable information relating to the potentially affected environment from any future relevant planned activities at the Cijevna River, if requested;

10. Request Albania and Montenegro to apply the Protocol as an environmental protection instrument at an early stage of development of plans and programmes, such as energy strategies or plans and joint river basin management plans that cover any future developments at the Cijevna River Basin or other areas of outstanding nature and environmental value; as well as, to ensure that cumulative impacts of the planned activities, including those in a transboundary context, are properly addressed.

2. Draft decision IX/4c–V/4c on compliance by Bosnia and Herzegovina with its obligations under the Convention and the Protocol with respect to the construction of Buk Bijela hydropower plant on the Drina River

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 (Meeting of the Parties to the Protocol),

Recalling article 11, paragraph 2 and article 14 bis of the Convention on Environmental Impact Assessment in a Transboundary Context and article 14, paragraph 4 of the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context,

Recalling further decisions IX/4 on general issues of compliance with the Convention adopted at the ninth session of the Meeting of the Parties to the Convention and V/4 on general issues of compliance with the Protocol, respectively, adopted at the fifth session of the Meeting of the Parties to the Protocol,

Having considered the findings and recommendations of the Implementation Committee on compliance by Bosnia and Herzegovina with its obligations under the Convention and the Protocol in respect of the construction of Buk Bijela hydropower plant on the Drina River, as set out in document ECE/MP.EIA/IC/2023/5,

[Having also considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning Bosnia and Herzegovina],

5 Forthcoming.
6 Forthcoming.
1. **Endorse** the findings of the Implementation Committee that, in accordance with the information provided to the Committee:

   (a) By not notifying Montenegro regarding the activity in 2012, Bosnia and Herzegovina failed to fulfil its obligations under articles 2 (4) and 3 (1) of the Convention;
   
   (b) The 2012–2013 environmental impact assessment by Bosnia and Herzegovina was still deemed valid for the issuance of a new permit in 2019;
   
   (c) Following the above (para. 1 (b)), Bosnia and Herzegovina was not obliged to conduct a new environmental impact assessment before issuing a new permit in 2019, and, therefore it had not failed to comply with its obligations under articles 2 (2)–(3) and 4 (1) of the Convention;
   
   (d) Bosnia and Herzegovina was not in non-compliance with its obligations under the Protocol, as the Protocol had entered into force for it only after the start of the procedure for the adoption of plans or programmes for the energy sector that include Buk Bijela hydropower plant;

2. **Welcome** the fact that the concerned Parties entered into bilateral cooperation to address some of the disputed issues and **recommend** that, in the future, the Parties broaden the scope of that cooperation to cover issues of a more general focus;

3. **Also welcome** the establishment of a joint working group as a result of the bilateral cooperation, not only for this project but also for future proposed activities, to enhance trust and understanding between the two Parties;

4. **Recommend** that, as part of its deliberations, the joint working group also addresses fish paths and other possible solutions to facilitate fish migration, given the importance of this subject for the proposed activity and the dispute between the concerned Parties.

II. **Draft decisions on compliance with the Convention**

1. **Draft decision IX/4 on general issues of compliance with the Convention**

   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,

   Also recalling the general parts of decisions III/2,7 IV/2,8 V/4,9 VI/2,10 of the Meeting of the Parties to the Convention on the review of compliance and decisions IS/111 and VIII/412 on general issues of compliance with the Convention,

   Determined to promote and improve compliance with the Convention, including through the early identification of compliance difficulties encountered by Parties and the adoption of appropriate and effective solutions for resolving them,

   Aware of the increased workload of the Implementation Committee in reviewing compliance and the need for Parties to reinforce the secretariat support for this important work,

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7 See ECE/MP.EIA/6, annex II.
8 See ECE/MP.EIA/10.
9 See ECE/MP.EIA/15.
11 See ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1.
12 See ECE/MP.EIA/30/Add.2ECE/MP.EIA/SEA/13/Add.2.
Having considered the analysis and recommendations made by the Implementation Committee on general compliance issues contained in the sixth review of implementation of the Convention contained in document ECE/MP.EIA/2020/8, adopted by decision VIII/5,\textsuperscript{13}

Having also considered the findings and recommendations of the Implementation Committee on three submissions made to the Committee concerning Albania,\textsuperscript{14} Bosnia and Herzegovina,\textsuperscript{15} and Serbia,\textsuperscript{16} and on three Committee initiatives concerning Belgium,\textsuperscript{17} Bulgaria,\textsuperscript{18} and Czechia,\textsuperscript{19}

Having further considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session and the reports of the Committee on its sessions in the period after the eighth session of the Meeting of the Parties (Vilnius (online), 8-11 December 2020),\textsuperscript{20}

Having reviewed the structure and functions\textsuperscript{21} of the Committee and its operating rules,\textsuperscript{22}

Recognizing the importance of updating and improving the efficiency of the working methods of the Committee to allow it to continue to effectively fulfill its mandate given the growth in number, complexity and scope of compliance issues before the Committee, in particular, related to nuclear power plants;

Having further reviewed the opinions of the Committee,\textsuperscript{23}

Recognizing the importance of rigorous reporting by Parties on their compliance with the Convention, and noting the seventh review of implementation of the Convention based on the answers of Parties to the questionnaires on the implementation of the Convention adopted in decision IX/5,\textsuperscript{24}

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

Noting that several compliance issues considered by the Committee had related to or revealed shortcomings in the concerned Parties’ national legislation to implement the Convention,

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 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 report of the Implementation Committee on its activities contained in document ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/12,\textsuperscript{25} welcomes the Committee’s reports on its sessions in the period after the eighth session of the Meeting of the Parties to the Convention, and requests the Committee to continue:

\textsuperscript{13} See ECE/MP.EIA/30/Add.2-ECE/MP.EIA/SEA/13/Add.1.
\textsuperscript{14} See ECE/MP.EIA/IC/2023/9 (forthcoming).
\textsuperscript{15} See ECE/MP.EIA/IC/2023/5.
\textsuperscript{16} See ECE/MP.EIA/IC/2022/8.
\textsuperscript{17} See ECE/MP.EIA/IC/2023/10 (forthcoming).
\textsuperscript{18} See ECE/MP.EIA/IC/2023/6.
\textsuperscript{19} See ECE/MP.EIA/IC/2023/11 (forthcoming).
\textsuperscript{20} See https://unece.org/sessions-3.
\textsuperscript{21} Decision III/2 (ECE/MP.EIA/6) as amended by decision VI/2 (ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1)
\textsuperscript{22} Decision IV/2, annex VI/2 (ECE/MP.EIA/10) as amended by decision V/4 (ECE/MP.EIA/15), VI/2 (ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1) and VIII/4 annex (See ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2).
\textsuperscript{23} Informal compilation of the opinions of the Implementation Committee until 2022/2023 (forthcoming).
\textsuperscript{24} Forthcoming.
\textsuperscript{25} Forthcoming.
(a) To keep the implementation and application of the Convention under review;
(b) To promote and support compliance with the Convention, including by providing assistance in this respect, as necessary.

2. **Welcomes** the 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 [decision IX/4b-V/4b concerning Armenia], decision IX/4d concerning Azerbaijan, decision IX/4e concerning Belarus [and decisions IX/4 […] concerning Ukraine] adopted by the Meeting of the Parties at its ninth session;

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

   (a) Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Denmark, Finland, Kazakhstan, Latvia, Republic of Moldova, Spain, Switzerland and the United Kingdom of Great Britain and Northern Ireland, which resulted in the Committee declaring its satisfaction with the clarifications provided by the Parties;

   (b) Kyrgyzstan, which in the absence of any response by the Party concerned so far, is to be considered by the Committee at its forthcoming sessions.

4. **Notes** the submission initiated by Belarus in April 2023 that will require further consideration by the Committee at its next sessions;

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

   (a) In two cases regarding Bosnia and Herzegovina, one case regarding Denmark, one case regarding Spain, and one case regarding Switzerland resulted in the Committee declaring its satisfaction with the clarifications provided by the Parties concerned at the time;\(^{26}\)

   (b) In one case concerning Bosnia and Herzegovina\(^ {27}\) and the case concerning Serbia\(^ {28}\) were superseded by submissions initiated by Montenegro and Bulgaria, respectively, and subject to the Committee’s findings and recommendations;

   (c) In the cases concerning [Belarus], Belgium, Bulgaria and Czechia, the Committee opened a Committee initiative and issued its findings and recommendations;

   (d) In the case regarding France will require further consideration by the Committee at its upcoming sessions;

6. **Further notes** that, further to the invasion of Ukraine by the Russian Federation, the Committee, at its fifty-second session (Geneva (online), 29–31 March 2022), postponed to its subsequent sessions its consideration of all compliance issues concerning Ukraine,\(^ {29}\) reassessing the situation and resuming its deliberations on the issues based on the information from Ukraine at its fifty-sixth session (Geneva, 2–5 May 2023);

\(^{26}\) Reference to report on the Committee’s activities (forthcoming).

\(^{27}\) See ECE/MP.EIA/IC/2023/5.

\(^{28}\) See ECE/MP.EIA/IC/2022/8.

\(^{29}\) Follow-up to 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 (EIA/IC/S/1); Follow-up to decision VIII/4e on compliance by Ukraine with its obligations under the Convention in respect of the extension of the lifetime of units 1 and 2 of Rivne nuclear power plant (EIA/IC/CI/4); Committee initiative (EIA/IC/CI/7) concerning compliance by Ukraine regarding its obligations under the Convention in respect of the construction of a large tourism complex (Svydovets mountains, Ukraine); Information gathering concerning the planned construction of nuclear reactors 3 and 4 at Khmelnytsky nuclear power plant (EIA/IC/INFO/10); Information gathering concerning activities at the Muzhiyevo goldmine (EIA/IC/INFO/13); Lifetime extension of Rivne (units 3 and 4), South Ukrainian, Zaporizhzhya and Khmelnytsky nuclear power plants in Ukraine (EIA/IC/INFO/20)
7. Notes that, as recommended by the Meetings of the Parties,\textsuperscript{30} the Committee considered the 2020 Guidance on the Applicability of the Convention to the Lifetime Extension of Nuclear Power Plants (the Guidance)\textsuperscript{31} when deliberating on compliance matters relating to the lifetime extensions of nuclear power plants;

8. Further notes the Committee’s decision related to nuclear power plants’ lifetime extension cases that generally involve a multitude of concerned Parties, and that are, therefore, prone to cause either a direct or an indirect conflict of interest for a majority of Committee members, to abstain exceptionally and provisionally from applying rule 5 paragraph 2 of the operating rules of the Implementation Committee in order to fulfil its mandate and to remain operational;\textsuperscript{32}

9. Welcomes the efforts by the Committee to revisit its structure and functions and operating rules with a view to improving the efficiency of its working methods and adapting its practice, for example regarding the issue of conflict of interest, to best fulfil its mandate and address compliance matters that have increased in number, complexity and scope;

10. Notes with regret that the Committee’s work continues to be 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. Reminds Parties of their obligation 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) When the Committee is considering a case of possible non-compliance by a Party with its obligations under the Convention, in line with paragraph 6 of the Committee’s structures and functions, it is not bound by rulings of national courts or other national or international bodies;\textsuperscript{33}

(b) The Committee may review compliance with the Convention even after the final decision on the activity in question had been taken, being consistent with the objective and functions of the Committee as set out in paragraph 4 of the Committee’s structures and functions;\textsuperscript{34, 35}

(c) The analysis whether an activity is likely to cause a significant adverse transboundary impact, should focus on the proposed activity’s typical effects and risks for the environment. This analysis does not take proposed nor described mitigating or compensatory measures into account, which could or would be set as conditions for the activity;\textsuperscript{36}

(d) A longer lapse of time in between the environmental impact assessment procedure and the granting of an environmental permit in itself could entail new considerations, for example as regards new technological developments. New knowledge might shift the views regarding permissibility of an activity or the conditions under which it might be conducted. Furthermore, changes in the environment might have occurred which were not covered by the initial environmental impact assessment and would therefore require a new assessment.\textsuperscript{37} On the other hand, the mere fact that several years had passed since the environmental impact assessment was conducted, did not necessarily in itself mean that the environmental impact assessment should be regarded as obsolete or void;

\textsuperscript{30} Decision VIII/6, para. 5.
\textsuperscript{31} United Nations publication, ECE/MP.EIA/31.
\textsuperscript{32} See ECE/MP.EIA/IC/2021/6, paras. 56-58.
\textsuperscript{33} See ECE/MP.EIA/IC/2023/10 (forthcoming), para. 30.
\textsuperscript{34} See ECE/MP.EIA/IC/2023/6, para. 33.
\textsuperscript{35} See ECE/MP.EIA/IC/2021/6, para. 67.
\textsuperscript{36} See ECE/MP.EIA/IC/2023/5, para. 45.
\textsuperscript{37} See ECE/MP.EIA/IC/2023/5, para. 55.
(e) When a Party wishes to enter into consultations under article 2 (5) regarding an activity not listed in appendix I, the Party of origin has an obligation to do so without delay; 38

(f) A lack of a response by the Party of origin to requests of the potentially affected Party regarding an activity not listed in appendix I to the Convention and a failure of the Party of origin to furnish a potentially affected Party with information about the activity in the light of the criteria for determining significant adverse impact set out in appendix III to the Convention constitutes non-compliance with article 2 (5) of the Convention; 39

(g) In the absence of any general derogations regarding the application of the Convention to projects listed in appendix I to the Convention undertaken exclusively or mainly for research, development and testing of new methods or products, the Convention applies to any such activity that is likely to cause a significant adverse transboundary environmental impact irrespective of the duration of its operation; 40

13. Further considers, following the opinions of the Implementation Committee with regard to the lifetime extensions of nuclear power plants, that:

(a) While the Convention allows its Parties flexibility to implement their obligations differently, such implementation practices must remain within the limits of the Convention’s obligations and their interpretation. 41 The endorsement of the Guidance by the Meeting of the Parties can be regarded as subsequent practice of the Parties regarding the interpretation of the Convention, in line with article 31(3) (b) of the Vienna Convention on the Law of the Treaties; 42

(b) Considering the statement in the Guidance that changes covered by the existing authorisation to operate do not trigger the application of the Convention, 43 such changes by themselves would generally not trigger a transboundary environmental impact assessment. However, changes implementing requirements specifying conditions under a rather general licence or changes requested in preparation of a licence renewal could be relevant when deciding whether physical works or modifications in the operating conditions amounted to a major change. 44

(c) While the Guidance states that physical works undertaken as part of regular maintenance work or ageing management are not usually regarded as major changes, related physical works are to be treated differently depending on their timing, considering that nuclear power plants during their lifetime undergo continuous step-by-step safety reviews and upgrades. While physical works early in the operating life are less relevant, physical works towards the end of the plant’s lifetime are to be considered when deciding on the application of the Convention for a lifetime extension, even if they are part of regular maintenance work or ageing management; 45

(d) Parties are obliged to provide the information concerning lifetime extension of nuclear power units requested by the Committee, to enable it to perform its functions. In the event that parts of such official decisions on the nuclear units or on extending original licenses are regarded as information the supply of which would be prejudicial to national security, those parts could be masked, leaving the remaining information open to the Committee; 46

38 See ECE/MP.EIA/IC/2021/4, para. 58.
39 See ECE/MP.EIA/IC/2021/2, para. 65.
40 See ECE/MP.EIA/IC/2022/8, para. 46.
41 See also decision IV/2, annex I, para. 11: “While the Convention allowed its Parties flexibility regarding application of its procedures within diverse national contexts, that flexibility was limited by each Party’s duty to comply with the Convention, and to implement it effectively and in keeping with its purpose.”
42 See ECE/MP.EIA/IC/2023/10 (forthcoming), para. 44.
43 See ECE/MP.EIA/31, para. 43.
44 See ECE/MP.EIA/IC/2023/x.
45 See ECE/MP.EIA/IC/2023/6, para. 53.
46 See ECE/MP.EIA/IC/2021/4, para. 70.
(e) In deciding on the application of the Convention, the competent authority should take into account that physical works within the nuclear power plant, modifications in the operating conditions of a smaller scale, (e.g., the use of a different fuel), or changes in the surrounding environment (e.g., a uranium enrichment plant enlargement nearby), might constitute, cumulatively or stand alone, a major change;47

14. Considers also following the opinions of the Committee that:

(a) The Convention itself does not provide for the suspension of the rights of any Party. Article 19 of the Convention regulating the withdrawal of a given Party from the Convention does not affect the application of articles 3–6 of the Convention to a proposed activity in respect of which a notification had already been made or requested. Not even an analogy could be drawn for the ongoing or planned procedures in respect of a temporary suspension;48

(b) It is not within the competence of the Committee to apply or interpret international law beyond the scope of the Convention. However, a temporary application of article 62 (1) of the Vienna Convention on the Law of Treaties, allowing for a “fundamental change of circumstances” to be taken as a reason for terminating or withdrawing from a treaty, limited to certain situations under specific transboundary environmental impact assessment procedures, might be possible, subject to a case-by-case examination;49

15. Urges Parties to take into account in their future work the considerations and recommendations for further improving the implementation of and compliance with the Convention, including by strengthening national legislation, based on but not limited to the considerations in paras. 12-14 above, and to the analyses on general compliance issues from the reviews of implementation, adopted by decisions III/1, IV/1, V/3, VI/1, VII/1, VIII/5 and IX/4;

16. Further urges Parties to take into account in their further work the opinions of the Committee in the period 2001-2023, 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 the years 2021, 2022 and 2023;

17. Adopts the amendments to the operating rules and the structures and functions of the Implementation Committee [set out in …], which should be applied to any meeting and to any other conduct of business of the Committee and requests the secretariat to arrange publication of the amended operating rules and structures and functions in electronic format, as an official document;

18. Decides to keep under review and to further develop the structure and functions of the Committee and its operating rules, if necessary, and requests the Committee to prepare proposals, as it deems necessary, for submission to the Meeting of the Parties at its tenth session.

2. Draft decision IX/4d on compliance by Azerbaijan with its obligations under the Convention in respect of its national legislation

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,

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47 See ECE/MP.EIA/IC/2022/2, para. 45 (b).
48 See ECE/MP.EIA/IC/2022/4, para. 50.
49 See ECE/MP.EIA/IC/2022/4, para. 53.
Recalling also its decisions V/4, paragraphs 31 and 32, \(^{50}\) VI/2, paragraphs 38–44, \(^{51}\) IS/1c \(^{52}\) and VIII/4b \(^{53}\) concerning compliance by Azerbaijan with regard to its national legislation for the implementation of the Convention,

Recalling further its decision IX/4\(^{54}\) on general issues of compliance with the Convention adopted at the ninth session,

Having considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning the steps taken by Azerbaijan further to decisions IS/1c and VIII/4b,

Acknowledging the technical assistance provided by the secretariat to the Government of Azerbaijan to assist the country in bringing its legislation into line with the provisions of the Convention and the Protocol on Strategic Environmental Assessment, further to paragraph 44 of decision VI/2,

1. Appreciates the regular, albeit occasionally delayed, progress reports on the steps taken by the Government of Azerbaijan further to decision VIII/4b since the eighth session of the Meeting of the Parties (Vilnius, (online), 8–11 December 2020);

2. Recognizes that, further to the technical assistance provided to it by the secretariat, the Government of Azerbaijan has taken steps to align its national legislation with the Protocol and encourages Azerbaijan to bring its legislation into full compliance with the Protocol and to ratify that treaty;

3. Welcomes the information from the Government of Azerbaijan that since the adoption of the Law on Environmental Impact Assessment on 12 June 2018 it has adopted six pieces of secondary legislation for the implementation of the Convention and the Protocol, the final two ones in September 2022; \(^{55}\)

4. Welcomes the provision of the English translation of two pieces of secondary legislation, further to paragraph 8 of decision VIII/4b, prepared with the support of the European Union for Environment programme, but regrets that not all translations of the secondary legislation have been provided;

5. Notes with concern, based on the Committee’s analysis of the amended framework Law on Environmental Impact Assessment, adopted on 12 June 2018, and the two pieces of secondary legislation, that the legislation adopted by Azerbaijan to implement the Convention still contains in particular the following deficiencies and therefore is not fully compliant with the Convention:

   (a) The definition of impact in line with article 1 (viii) is still not introduced;

   (b) The definition of the proposed activity is still not fully compliant with the Convention, as it does not include “any major change to an activity subject to a decision of a competent authority in accordance with an applicable national procedure”;

   (c) The description of the content of the environmental impact assessment documentation is not fully compliant with the appendix II to the Convention, lacking, especially, the information required in appendix II (g) and (i);

   (d) Regarding the decision-making process, there is no clear provision on how the outcome of the environmental impact assessment is taken into account in the final decision on the proposed activity, along with the reasons and consideration on which the decision is based upon;

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\(^{50}\) See ECE/MP.EIA/15.

\(^{51}\) See ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

\(^{52}\) See ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1.

\(^{53}\) See ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2.

\(^{54}\) Forthcoming.

\(^{55}\) “Regulation on Implementation of Strategic Environmental Assessment”, adopted on 17 September 2022 by decision No. 354 of the Cabinet of Ministers and “Regulation on Implementation of Environmental Impact Assessment, including transboundary impact assessment and its duration” adopted on 21 September 2022 by decision No. 362 of the Cabinet of Ministers.
(e) Article 3 (1) is not correctly implemented, lacking in particular the provision when the Party of origin shall notify affected Parties;

6. Endorses the finding of the Implementation Committee that, despite steps taken, the Government of Azerbaijan has not yet fulfilled the requests addressed to it in decisions VIII/4b, IS/1c and VI/2;

7. Regrets that despite over a decade of technical assistance provided by the secretariat and the Implementation Committee to Azerbaijan to bring its legislation into line with the Convention, and multiple decisions by the Meetings of the Parties requesting it to do so, Azerbaijan has not yet adopted fully compliant legislation;

8. Reaffirms its decisions VI/2, IS/1c, and VIII/4b, and requests the Government of Azerbaijan to rectify as soon as possible the amended legislation and the relevant secondary legislation in accordance with the paragraph 5 (a)–(e) above and the previous recommendations of the international consultants to the secretariat with a view to ensuring full compliance of its legislative framework with the Convention;

9. Requests the Government of Azerbaijan to provide the Implementation Committee with the text of the amended legislation and the relevant secondary legislation, once adopted, together with the English translation thereof;

10. Requests also the Implementation Committee to evaluate the amendments to the legislation and the relevant secondary legislation, once adopted, and to report to the Meeting of the Parties at its tenth session thereon.

3. Draft decision IX/4e on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovo

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 its decisions VI/2, paragraphs 48–64, IS/1d 57 and VIII/4c, 58 concerning compliance by Belarus with its obligations under the Convention in respect of the construction of the nuclear power plant in Ostrovo,

Recalling further its decision IX/4 59 on general issues of compliance with the Convention adopted at its ninth session,

[Having also considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning Belarus],

1. Expresses appreciation for the delivery by Belarus and Lithuania of their annual reports, further to paragraph 5 of decision VIII/4c;

2. Recalls that, by the ninth session of the Meeting of the Parties, both Parties were encouraged to conclude a bilateral agreement for the implementation of the Convention further to article 8 of the Convention, to carry out a post-project analysis, and to continue bilateral expert consultations on issues of disagreement;

3. Acknowledges that, during the intersessional period, Belarus and Lithuania had held one bilateral expert meeting with the aim of discussing remaining differences and to make progress in accordance with decision VIII/4c, noting, however that said meeting’s

56 See ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.
57 See ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1.
58 See ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2.
59 Forthcoming.
outcomes had still not been agreed at the current time, and considering that, irrespective of the pandemic, the Parties would have had ample opportunities to hold other online meetings;

4. **Notes** that the Implementation Committee conducted informal online consultations with the two Parties during its fifty-fourth session and expresses appreciation for the comments submitted by both of them following the consultations, which indicated some willingness to continue the cooperation;

5. **Expresses** regret, however, at the lack of progress by the Parties concerned since 2014 in completing the actions set out in paragraph 2 above;

6. **Urges** both Parties to complete the actions in paragraph 2 above, at the latest by the tenth session of the Meeting of the Parties;

7. **Requests** the Governments of Belarus and the Lithuania to continue reporting to the Implementation Committee on the progress made by the end of each year.

4. **Draft decision IX/4g on compliance by Belgium with its obligations under the Convention in respect of the lifetime extension of Tihange nuclear power plant**

   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 further its decision IX/4\textsuperscript{60} on general issues of compliance with the Convention adopted at its ninth session,

   Having considered the findings and recommendations of the Implementation Committee on compliance by Belgium with its obligations under the Convention in respect of the lifetime extension of unit 1 of Tihange nuclear power plant, as set out in document ECE/MP.EIA/IC/2023/10,\textsuperscript{61}

   [Having also considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning Belgium.]

   1. **Endorses** the findings of the Implementation Committee that, in accordance with the information provided to the Committee, Belgium was in non-compliance with articles 2 (3) and 3 (1) of the Convention by extending the lifetime of unit 1 of Tihange nuclear power plant and preparing the unit for long-term operation without applying the Convention;

   2. **Welcomes** the fact that Belgium committed itself to notifying possibly affected Parties in accordance with article 3 (1) of the Convention ahead of any future lifetime extension of other units of Tihange nuclear power plant;

   3. **Requests** Belgium to ensure that the Convention is fully applied in the context of any future decision-making regarding Tihange nuclear power plant, including that:

      (a) All impacts of operational states and accidents are properly taken into account during the environmental impact assessment procedure;

      (b) When considering whether the lifetime extension constitutes a major change, the activities implemented to prepare for long-term operation prior to the last licence modification, are taken into account;

      (c) Belgium notifies in accordance with article 3 (1) of the Convention any Party which it considers may be affected, including Germany;

\textsuperscript{60} Forthcoming.

\textsuperscript{61} Forthcoming.
4. Recommends that Belgium follow the good practice recommendations of the Meeting of the Parties that given the great public concern and national interests involved when it comes to nuclear energy-related activities, a wide notification, that is, beyond neighbouring Parties, could prevent later misunderstandings and potential disputes.\(^{62}\)

5. **Draft decision IX/4h on compliance by Bulgaria with its obligations under the Convention with respect to the lifetime extension of units 5 and 6 of Kozloduy nuclear power plant**

*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* further its decision IX/4\(^{63}\) on general issues of compliance with the Convention adopted at its ninth session,

*Having considered* the findings and recommendations of the Implementation Committee on compliance by Bulgaria with its obligations under the Convention with respect to the lifetime extension of units 5 and 6 of Kozloduy nuclear power plant, as set out in document ECE/MP.EIA/IC/2023/6,

*[Having also considered* the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning Bulgaria],

1. *Expresses* regret at the uncooperativeness of Bulgaria with regard to providing the Committee with the information and documentation needed for its deliberations, requiring it to repeatedly request such information and documentation;

2. *Reminds* Bulgaria, that as a Party it has been strongly urged to facilitate the Committee’s work in good faith, (paragraph 11 of decision VIII/4 (ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2) and that it should act accordingly, also in line with article 26 of the Vienna Convention on the Law of Treaties;

3. *Endorses* the findings of the Implementation Committee that, in accordance with the information provided to the Committee, Bulgaria was in non-compliance with articles 2 (3) and 3 (1) of the Convention by extending the lifetime of units 5 and 6 of Kozloduy nuclear power plant and preparing the units for long-term operation without applying the Convention;

4. *Welcomes* the fact that Bulgaria committed itself to notifying Austria, Romania and Serbia ahead of any future lifetime extension for units 5 and 6 of Kozloduy nuclear power plant in accordance with article 3 (1) of the Convention after the Parties had requested such notification;

5. *Requests* Bulgaria to ensure that the Convention is fully applied in the context of any future decision-making regarding Kozloduy nuclear power plant, including ensuring that:

- (a) All impacts of operational states and accidents are properly taken into account during the environmental impact assessment procedure;

- (b) When considering whether the lifetime extension constitutes a major change, the activities implemented to prepare for long-term operation prior to the latest licence renewals are taken into account;

\(^{62}\) Good Practice Recommendations on the Application of the Convention to Nuclear Energy-related Activities (ECE/MP.EIA/2017/10), para. 28, endorsed by the Meeting of the Parties at its seventh session (Minsk, 13–16 June 2017), through decision VII/6.

\(^{63}\) Forthcoming.
(c) Bulgaria notifies, in accordance with article 3 (1) of the Convention, any Party which it considers may be affected, including Austria, Romania and Serbia, which, in the context of the present case, have expressly considered themselves potentially affected and requested to be notified;

6. Recommends that Bulgaria follow the good practice recommendations of the Meeting of the Parties that given the great public concern and national interests involved when it comes to nuclear energy-related activities, a wide notification, that is, beyond neighbouring Parties, could prevent later misunderstandings and potential disputes. 64

6. Draft decision IX/4i on compliance by Czechia with its obligations under the Convention in respect of the lifetime extension of Dukovany nuclear power plant

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 further its decision IX/465 on general issues of compliance with the Convention adopted at its ninth session,

Having considered the findings and recommendations of the Implementation Committee on compliance by Czechia with its obligations under the Convention in respect of the lifetime extension of Dukovany nuclear power plant, as set out in document ECE/MP.EIA/IC/2023/11,66

[Having also considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning Czechia],

1. Endorses the findings of the Implementation Committee that, in accordance with the information provided to the Committee, Czechia was in non-compliance with articles 2 (3) and 3 (1) of the Convention when extending the lifetime of units 1-4 of Dukovany nuclear power plant and preparing the units for long-term operation without applying the Convention;

2. Welcomes the fact that Czechia committed to notifying Austria and Germany ahead of future lifetime extensions of nuclear power plants or significant changes in the licences of the operating units of the nuclear power plants in its territory in accordance with article 3 (1) of the Convention as was requested by both Parties;

3. Invites Czechia to continue bilateral consultations and cooperation with Austria and Germany for information exchange on long-term operation related activities regarding the units of Dukovany and Temelin nuclear power plants in an appropriate way;

4. Encourages Czechia to prepare bilateral agreements on the application of the Convention with Austria and Germany;

5. Requests Czechia to ensure that the Convention is fully applied in the context of any future decision-making regarding any lifetime extension activities of any Czech nuclear power plant, including that:

(a) All impacts of operational states and accidents are properly taken into account during the environmental impact assessment procedure;

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64 Good Practice Recommendations on the Application of the Convention to Nuclear Energy-related Activities (ECE/MP.EIA/2017/10), para. 28, endorsed by the Meeting of the Parties at its seventh session (Minsk, 13–16 June 2017), through decision VII/6 (ECE/MP.EIA/23.Add.2–ECE/MP.EIA/SEA/7.Add.2).

65 Forthcoming.

66 Forthcoming.
(b) When considering whether the lifetime extension constitutes a major change, the activities implemented to prepare for long-term operation prior to the last licence renewals, are taken into account;

(c) Czechia notifies in accordance with article 3 (1) of the Convention any Party which it considers may be affected, including Austria and Germany;

6. **Recommends** that Czechia follows the good practice recommendations of the Meeting of the Parties that given the great public concern and national interests involved when it comes to nuclear energy-related activities, a wide notification, that is, beyond neighbouring Parties, could prevent later misunderstandings and potential disputes;\(^{67}\)

7. **Welcomes** the cooperation of Czechia in the proceedings which facilitated the considerations of the Committee.

7. **Draft decision IX/4j on compliance by Serbia with its obligations under the Convention with respect to several mining-related activities in Karamanica, Popovica and Podvirovi and the Grot mine**

*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 further** its decision IX/4\(^{68}\) on general issues of compliance with the Convention adopted at its ninth session,

**Having considered,** further to paragraph 6 of the appendix to decision III/2,\(^{69}\) the findings and recommendations of the Implementation Committee on compliance by Serbia with its obligations under the Convention with respect to several mining-related activities in Karamanica, Popovica and Podvirovi and the Grot mine, as set out in document ECE/MP.EIA/IC/2022/8,

**[Having also considered]** the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning Serbia.

1. **Endorses** the findings of the Implementation Committee that, in accordance with the information provided to the Committee:

(a) Serbia complied with:

   (i) Articles 2 (4) and 3 (1) of the Convention concerning the Karamanica pilot facility and the expansion of the exploitation of the Podvirovi and Popovica mining sites by notifying Bulgaria about the proposed activity at the Grot mine in 2009;

   (ii) Article 3 (2) of the Convention with regard to the Karamanica pilot flotation facility, including with regard to the information on the proposed activity under article 3 (2) (a) and time frames specified in the notification as set out in article 3 (2) (c).

(b) By not notifying Bulgaria regarding the major change to the activity at the Grot mine, Serbia failed to comply with articles 2 (4) and 3 (1) of the Convention in respect of the environmental impact assessment procedure for the activity carried out by it in 2019;

(c) Bulgaria failed to fulfil its obligations under articles 3 (3) and (8) and 4 (2) of the Convention by not responding to the notification of Serbia regarding the Karamanica pilot activity within the time specified in the notification;

\(^{67}\) Good Practice Recommendations on the Application of the Convention to Nuclear Energy-related Activities (ECE/MP.EIA/2017/10), para. 28, endorsed by the Meeting of the Parties at its seventh session (Minsk, 13–16 June 2017), through decision VII/6.

\(^{68}\) Forthcoming.

\(^{69}\) See ECE/MP/EIA/6, annex II.
(d) In the absence of a notification from Serbia regarding the activity at the Grot mine, neither of the Parties concerned took appropriate steps under article 3 (7) to exchange information for the purposes of holding discussions on whether a significant adverse impact from the proposed activity was likely on the territory of Bulgaria;

2. Requests Bulgaria and Serbia to fulfil their obligations under articles 3 (8) and 4 (2) by ensuring that the public of Bulgaria is given an opportunity to participate in the ongoing transboundary procedure regarding the Karamanica permanent flotation plant;

3. Welcomes the fact that Serbia notified Bulgaria regarding the new activity encompassing exploitation of the Podvirovi and Popovica sites and the construction of a permanent flotation facility in Karamanica, noting that Bulgaria expressed its wish to participate in the related transboundary procedure;

4. Requests Serbia to ensure that the Convention is fully applied in the context of any future decision-making regarding planned mining activities, including those at Karamanica, the Grot mine and/or located in the municipalities of Vranje and Bosilegrad, and that the cumulative impact from the new and already existing mining activities, as well as the cumulative impact of other activities affecting the conditions in the water system are properly taken into account during the environmental impact assessment procedure;

5. Welcomes steps taken by both Parties concerned under article 8 of the Convention to develop and conclude a bilateral agreement for the implementation of the Convention and also encourages Parties to incorporate in that agreement:

(a) Elements referred to in appendix VI to the Convention, including undertaking joint environmental impact assessment and development of joint monitoring programmes, as referred to in paragraph 2 (g) of appendix VI to the Convention;

(b) Special arrangements for the implementation of article 3 (7) of the Convention and for situations when one of the Parties may face impediments to responding to the notification within the time frames specified therein;

6. Encourages Serbia to establish a network for monitoring the pollution of the Ljubatska River basin and the Dragovitsa River basin and to regularly communicate the results to Bulgaria, with a view to taking all appropriate measures to control any significant adverse transboundary impact from the activities referred in the submission, including those listed in paragraph 4 above.

III. Draft decisions on compliance with the Protocol

1. Draft decision V/4 on general issues of compliance with the Protocol

The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol,

Recalling article 14, paragraph 6, of the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context,

Recalling also decision V/6–I/670 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 concerning the application of the compliance procedure of the Convention to the Protocol, and decisions II/2, 71 III/372 and IV/473 on the review of compliance with the Protocol,

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70 See ECE/MP.EIA/SEA/2.
71 See ECE/MP.EIA/20/Add.2–ECE/MP.EIA/SEA/4/Add.2.
72 See ECE/MP.EIA/23/Add.3–ECE/MP.EIA/SEA/7/Add.3.
73 See ECE/MP.EIA/30/Add.3–ECE/MP.EIA/SEA/13/Add.3.
Determined to promote and improve compliance with the Protocol, including through the early identification of compliance difficulties encountered by Parties and the adoption of appropriate and effective solutions for resolving them,

Aware of the increased workload of the Implementation Committee in reviewing compliance and the need for Parties to reinforce the secretariat support for this important work,

Having considered the analysis and recommendations made by the Implementation Committee on general compliance issues contained in the third review of implementation of the Protocol contained in document ECE/MP.EIA/SEA/2020/8, adopted by decision IV/5, 74

Having also considered the findings and recommendations of the Implementation Committee on two submissions made to the Committee concerning Albania75 and Bosnia and Herzegovina76, and on one Committee initiative concerning Serbia;77

Having further considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session and to the Meeting of the Parties to the Protocol at its fifth session,78 and the reports of the Committee on its sessions in the period after 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 (Vilnius (online), 8-11 December 2020),79

Having reviewed the structure and functions80 of the Committee and its operating rules,81

Recognizing the importance of updating and improving the efficiency of the working methods of the Committee to allow it to continue to effectively fulfill its mandate given the growth in number, complexity and scope of compliance issues before the Committee;

Having further reviewed the opinions of the Committee,82

Recognizing the importance of rigorous reporting by Parties on their compliance with the Protocol, and noting the fourth review of implementation of the Protocol based on the answers of Parties to the questionnaires on the implementation of the Protocol adopted in decision V/5,83

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

Noting that some compliance issues considered by the Committee had related to or revealed shortcomings in the concerned Parties’ national legislation to implement 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 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,

74 See ECE/MP.EIA/30/Add.3/ECE/MP.EIA/SEA/13/Add.3.
75 See ECE/MP.EIA/IC/2023/9 (forthcoming).
76 See ECE/MP.EIA/IC/2023/5.
77 See ECE/MP.EIA/IC/2022/5.
78 Forthcoming.
79 See https://unece.org/sessions-3.
80 Decision III/2 (ECE/MP.EIA/6) as amended by decision VI/2 (ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1)
81 Decision IV/2, annex VI/2 (ECE/MP.EIA/10) as amended by decision V/4 (ECE/MP.EIA/15), VI/2 (ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1) and VII/4 annex (See ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2).
82 Informal compilation of the opinions of the Implementation Committee until 2022/2023 (forthcoming)
83 Forthcoming.
1. **Adopts** the report of the Implementation Committee on its activities contained in document ECE/MP.EIA/2023/13 – ECE/MP.EIA/SEA/2023/12, welcomes the Committee’s reports on its sessions in the period after the fourth session of the Meeting of the Parties to the Protocol, and requests the Committee to continue:

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

2. **Welcomes** the examination by the Committee of specific compliance issues identified in the third review of implementation of the Protocol regarding Armenia, Bosnia and Herzegovina, and North Macedonia which:

   (a) In the case of Bosnia and Herzegovina, resulted in the Committee declaring its satisfaction with the clarifications provided by the Party;
   
   (b) In the case of Armenia, due to the late submission of information, will require further consideration by the Committee at its upcoming session as part of its follow-up to decision VIII/4a on compliance by Armenia with its obligations under the Convention in respect of its national legislation, which requests Armenia to ensure full compliance of its legislative framework also with the Protocol;
   
   (c) In the case of North Macedonia, will require further consideration by the Committee at its upcoming sessions due to the lack of response from the Party concerned;

3. **Also welcomes** the examination by the Committee of the specific compliance issues identified in the first review of implementation of the Protocol regarding the European Union, which resulted in the development of specific reporting templates for the European Union to facilitate its reporting on the implementation of the Convention and the Protocol, whereas the deliberations of the specific compliance issues will be finalized after the reporting templates will have been duly noted by the Meetings of the Parties at its present sessions;

4. **Notes** the examination by the Committee of the specific compliance issues identified in the second review of implementation of the Protocol regarding Serbia, which will require further consideration by the Committee at its upcoming sessions due to the lack of response from the Party concerned;

5. **Further notes** the submission initiated by Montenegro on 11 December 2020 expressing its concerns about compliance by Bosnia and Herzegovina with its obligations under the Convention and the Protocol in respect of the construction of the Buk Bijela hydropower, which was subject to the Committee’s findings and recommendations;

6. **Further welcomes** the examination by the Committee of information received from other sources, including the public, regarding Germany, Poland and Serbia, which resulted in the Committee declaring its satisfaction with the clarifications provided by Germany and Poland, and, in the case of Serbia, led to a Committee initiative;

7. **Welcomes** the efforts by the Committee to revisit its structure and functions and operating rules with a view to improving the efficiency of its working methods and adapting its practice e.g. regarding the issue of conflict of interest to best fulfil its mandate and address compliance matters that have increased in number, complexity and scope;

8. **Notes with regret** that the Committee’s work continues to be hindered by lateness and insufficient quality of responses by some Parties concerned, and, in some cases, also by their refusal to respond;

9. **Reminds** Parties of their obligation to facilitate the Committee’s work in good faith by providing it with the requested information in a timely manner and in good quality;

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84 See ECE/MP.EIA/2023/10 – ECE/MP.EIA/SEA/2023/6)

85 See ECE/MP.EIA/IC/2023/6.

86 See ECE/MP.EIA/IC/2022/5.
10. **Considers**, following the opinions of the Committee, that:

(a) When notifying the affected Parties in accordance with article 10 (1), the Party of origin is under the obligation to ensure that that notification is done properly and duly delivered to the affected Party with a view to guaranteeing that the affected Party is afforded an opportunity to express its willingness to participate in the transboundary consultations before the adoption of a plan/programme;87

(b) To ensure timely and efficient notification, the Party of origin should:

(i) Send a notification, containing information, inter alia, set out in article 10 (2), by email directly to the national point of contact of the affected Party, unless sending it by post is specifically required by one of the concerned Parties and, as appropriate, forward it through diplomatic channels;

(ii) As a matter of good practice, request an acknowledgement of the notification and, in the absence of such acknowledgement, take action to confirm that the notification has been received before assuming that the lack of a response indicates that an affected Party does not wish to participate;

(iii) Retain copies of the notifications and records of the means of communication, dates and addresses;88

(c) In the light of the Protocol’s objective to provide for a high level of protection of the environment and to enhance cooperation in assessing transboundary environmental effects of proposed plans and programmes, it is recommended that, when a State ratifies the Protocol shortly before the transboundary procedure has been initiated and when it subsequently expresses a wish to participate in those consultations, the Party of origin may consider notifying that State on a voluntary basis;89

(d) At the scoping stage of the strategic environmental assessment, the Party of origin’s early notification of (referred to in decision II/7), or informal “pre-notification” contacts with the affected Party can support the determination of the relevant information to be included in the environmental report and help avoid delays in the decision-making stage. However, the Party of origin should notify the affected Party officially as soon as the documents required under article 10 (2) (a) have been finalized; 90

(e) As a matter of good practice and to ensure the effectiveness of the transboundary procedure, it is recommended that Parties of origin indicate in the notification two time frames for the affected Parties: the first for expressing their wish to participate in the consultations under article 10 (3) and the second for transmitting their comments and opinions referred to in article 10 (2) (b) and (4). The first time frame should be sufficiently long to allow the affected Party to screen the documents provided and take a decision on its participation; the second time frame must be long enough to allow the affected Party to inform its authorities and the public concerned and give them an opportunity to consider the draft plan/programme and the environmental report and to provide its comments and opinions to the Party of origin; 91

(f) The minimum time frames for the transmission of comments from the affected Party (which according to the Parties vary between 30 to 90 days)92 should take into account various factors to be agreed among the Parties concerned under article 10 (4), as needed. Those factors may include the complexity and scale of the draft plan/programme and the environmental report and to provide its comments and opinions to the Party of origin; 93

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87 See ECE/MP.EIA/IC/2022/5, para. 58.
88 See ECE/MP.EIA/IC/2022/5, para. 60.
89 See ECE/MP.EIA/IC/2022/5, para. 63.
90 See ECE/MP.EIA/IC/2022/5, para. 67.
91 See ECE/MP.EIA/IC/2022/5, para. 71.
92 See the reviews of implementation for the implementation of the Protocol: United Nations publication, ECE/MP.EIA/SEA/14, para. 52 and table 2.
93 See ECE/MP.EIA/IC/2022/5, para. 72.
11. Considers also, following the opinion of the Committee, that

(a) Similar to the notification under the Convention, affected Parties should endeavour to always provide a response to the notification regarding their intention to participate in the transboundary consultations as early as possible within time frames suggested by the Party of origin, so as to allow it to proceed with the next steps. 94 Otherwise, the absence of a timely response may be understood by the Party of origin as a lack of willingness to participate. 95 It is recommended that the Party of origin extends the deadlines referred to in paragraph 10 (e) above, if the affected Party so requests. Alternatively, if an affected Party finds that the time schedule in the notification is insufficient for it to ensure that its public and its relevant authorities are informed and given the opportunity to forward their opinion, the Party of origin and the affected Party should discuss and agree on more reasonable time frames for transmission of the comments in the context of considering detailed arrangements referred to in article 10 (4); 96

(b) The detailed arrangements for consultations that the Party of origin and the affected Party must agree in accordance with article 10 (4), may cover timing and means for consultations, including public participation in the affected Parties, issues to be covered, translation of documents and interpretation during any meetings; 97

(c) Both the Party of origin and the affected Party are responsible for ensuring that the authorities and the public concerned of the affected Party are informed and given an opportunity to forward their opinion on the draft plan/programme and the environmental report in accordance with article 10 (4). To this end, the Parties concerned should establish efficient communication among themselves with a view to enabling the public concerned and authorities of the affected Party to participate in the transboundary procedure under the Protocol; 98

(d) The Party of origin should inform the affected Party which, following the notification has indicated its willingness to participate in the consultations, about the adoption of the plan/programme as set out in article 11 (2), even in the absence of any comments from that affected Party. 99

12. Encourages Parties to use the format for notification adopted by decision II/7 when notifying affected Parties under the Protocol; 100

13. Urges Parties to take into account in their future work the considerations and recommendations for further improving the implementation of and compliance with the Protocol, including by strengthening national legislation, based on but not limited to the considerations in paras. 10 and 11 above, and to the analyses on general compliance issues from the reviews of implementation, adopted by decisions II/2, 101 III/3 102 and IV/4 103;

14. Urges also Parties to take into account in their further work the opinions of the Committee in the period 2001–2023, 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 the years 2021, 2022 and 2023;

15. Adopts the amendments to the operating rules and the structures and functions of the Implementation Committee [set out in …], which should be applied to any meeting and to any other conduct of business of the Committee and requests the secretariat to arrange publication of the amended operating rules and structures and functions in electronic format, as an official document;

94 See ECE/MP.EIA/2017/10, para. 32.
96 See ECE/MP.EIA/IC/2022/5, para. 74.
97 See ECE/MP.EIA/IC/2022/5, para. 75.
98 See ECE/MP.EIA/IC/2022/5, para. 76.
99 See ECE/MP.EIA/IC/2022/5, para. 77.
100 See ECE/MP.EIA/20/Add.2–ECE/MP.EIA/SEA/4/Add.2.
101 See ECE/MP.EIA/20/Add.2–ECE/MP.EIA/SEA/4/Add.2.
102 See ECE/MP.EIA/23/Add.3–ECE/MP.EIA/SEA/7/Add.3.
103 See ECE/MP.EIA/30/Add.3–ECE/MP.EIA/SEA/13/Add.3.
16. **Decides** to keep under review and to further develop the structure and functions of the Committee and its operating rules, if necessary, and requests the Committee to prepare proposals, as it deems necessary, for submission to the Meeting of the Parties to the Protocol at its sixth session.


   The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol,

   Recalling article 14, paragraph 4 of the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, and article 14 bis of the Convention,

   Also recalling decision V/4\textsuperscript{104} on general issues of compliance with the Protocol adopted at the fifth session,

   Having considered, further to paragraph 6 of the appendix to decision III/2,\textsuperscript{105} the findings and recommendations of the Implementation Committee on the Committee initiative with regard to the Energy Strategy and the Programme for its Implementation of Serbia, as set out in document ECE/MP.EIA/IC/2022/5,

   [Having also considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol at its fifth session, in particular, the section concerning Serbia],

   1. **Endorses** the Implementation Committee’s findings that Serbia is in non-compliance with its obligations under article 3 (1) of the Protocol regarding legislative, regulatory and other measures to ensure proper implementation of article 10 regarding transboundary consultations and article 11 on decision-making and informing the Parties consulted about the decision;

   2. **Also endorses** the Implementation Committee’s findings that Serbia is in non-compliance with its obligations under the Protocol concerning:

   (a) The Energy Sector Development Strategy for the period up to 2025 with Projections up to 2030, with article 10 (1) and (2) for not having notified Croatia, Hungary and Romania;

   (b) The Strategy’s Implementation Programme for the Period 2017–2023, with article 10 (3) and (4) concerning transboundary consultations with Hungary and detailed arrangements thereof, and article 11 on taking into account the results of the transboundary consultations and informing the affected Parties accordingly;

   3. **Requests** the Government of Serbia to ensure that its legislation, regulations and other measures fully implement the Protocol’s provisions, including articles 10 and 11 concerning the transboundary consultations and the results thereof, and requests the Implementation Committee to review the legislative and institutional frameworks for the Protocol’s implementation once amended;

   4. **Also requests** the Government of Serbia to submit to the Implementation Committee, by the end of 2024 if it has not done so earlier, a road map with a time schedule, spelling out planned actions to ensure compliance by Serbia with articles 10 and 11 of the Protocol, including, but not limited to, legislative and institutional reforms, as needed.

\textsuperscript{104} Forthcoming.

\textsuperscript{105} ECE/MP/EIA/6, annex II.
capacity-building, setting up a register of transboundary procedures, and storage of the related documents, and, thereafter, to report to the Committee on implementation of the road map;

5. *Considers* that, exceptionally, bearing in mind that Serbia notified Croatia, Hungary and Romania regarding the Strategy’s Implementation Programme and that those Parties do not wish to reopen the transboundary procedure regarding the Energy Strategy and Hungary does not wish to reopen the transboundary procedure of the Implementation Programme either, no further action from Serbia is required under article 10 of the Protocol in relation to both documents subject to the Committee initiative;

6. *Requests* Serbia, further to article 11 (2) of the Protocol, to inform all the affected Parties, notably, Croatia, Hungary, Montenegro and Romania, that have not yet been informed about the adoption of the Energy Strategy’s Implementation Programme and to provide them with the adopted Programme, together with a statement summarizing how environmental, including health, considerations have been integrated into the Programme, how their comments have been taken into account and the reasons for adopting the Programme in the light of reasonable alternatives considered;

7. *Requests* Serbia to ensure that, during the project level implementation of the Strategy and the Programme, potentially affected Parties are notified in accordance with article 3 (1) of the Espoo Convention for the projects with likely significant adverse transboundary impacts;

8. *Also requests* Serbia to ensure that, when preparing or adopting plans and programmes falling under the Protocol, including Spatial Plans, Energy Strategies or Programmes for their implementation, or their revisions, the Protocol and its articles 10 and 11 are fully applied; encouraging Serbia to use the format for notification adopted by decision II/7 when notifying affected Parties under the Protocol;

9. *Further requests* Serbia to agree with Croatia, Hungary and Romania on detailed arrangements, as set out in article 10 (4) of the Protocol, for the transboundary consultations regarding the new or revised Energy Strategy, taking into account their expressed willingness to participate in that procedure;

10. *Encourages* the Government of Serbia to enter into negotiations with its other neighbouring Parties to cooperate in elaborating bilateral or other arrangements, in order to support the implementation of article 10 of the Protocol in the context of developing future plans and programmes falling under the Protocol (and, at the project level, to facilitate implementation of Convention procedures);

11. *Requests* the Government of Serbia to report to the Implementation Committee on progress made on the steps taken further to paragraphs 3, 4, 6-7 above, by the end of each year, starting in 2024, and invites the Implementation Committee to report to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol at its sixth session on the progress made by Serbia.