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

Ninth session

Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment

Fifth session

Geneva, 12–15 December 2023

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

Outstanding issues: draft joint decisions

Adoption of decisions: decisions to be taken jointly

Proposed amendments to the Implementation Committee's structure and functions and operating rules

Proposal by the Implementation Committee

Summary

This document presents proposed amendments to the structure and functions and operating rules of the Implementation Committee under the Convention on Environmental Impact Assessment and the Protocol on Strategic Environmental Assessment. It has been prepared by the Implementation Committee in accordance with decisions VIII/4, on general issues of compliance with the Convention, and IV/4, on general issues of compliance with the Protocol,^a as well as the workplan for 2021–2023.^b

The Meetings of the Parties at their eighth and fourth sessions (Vilnius (online), 8–11 December 2020) recognized the importance of improving the efficiency of the working methods of the Implementation Committee in view of the growing number and increasing complexity of compliance issues brought before the Committee and the role of the Parties concerned in facilitating the Committee's work. They decided to keep under review and to further develop the structure and functions of the Committee and its operating rules at their ninth and fifth sessions, respectively, in the light of experience gained by the Committee in the interim, and with a view to enhancing the coherence and reducing duplication between



the two sets of rules and to increasing use of videoconferencing and other online and electronic communication tools as effective means for managing the Committee's workload.

As requested, during the intersessional period 2021–2023, the Committee reviewed its modus operandi and identified several issues that required clarification and/or adjustment in order to allow the Committee to continue to effectively fulfil its mandate and to further improve its working methods, considering the extent of its current workload.

The proposed amendments were submitted for information and possible comments to the twelfth meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 13–15 June 2023) and finalized at the Implementation Committee's fifty-seventh session (Geneva, 29 August–1 September 2023).

For ease of reference, the rationale for the proposed amendments to the Implementation Committee's structure and functions and operating rules and a track-change version of said proposed amendments are contained in, respectively, informal documents ECE/MP.EIA/2023/INF.6 and ECE/MP.EIA/2023/INF.7.

The Meetings of the Parties are expected to agree on the proposed amendments to the structures and functions and operating rules of the Implementation Committee and to adopt them through decisions IX/4, on general issues of compliance with the Convention, and V/4, on general issues of compliance with the Protocol.

^a All decisions of the Meetings of the Parties to the Convention and the Protocol referred to in the present document are available at <https://unece.org/environment-policy/environmental-assessment/decisions-taken-meetings-parties>

^b Decision VIII/2–IV/2, annex I.

I. Amendments to the structure and functions of the Implementation Committee and procedures for review of compliance

1. Amend the structure and functions of the Implementation Committee and procedures for review of compliance (Meeting of the Parties to the Convention decision III/2, appendix, as amended by decision VI/2, annex I) as follows:

(a) Replace the second sentence in paragraph 1 (a) with the following:
“Each of the eight Parties shall appoint a permanent and an alternate member of the Committee.”;

(b) Insert a footnote in paragraph 1 (a), third sentence, after the expression “Committee’s sessions”. The footnote should read as follows:

It is important for the Parties to understand their obligations when nominating representatives to serve on the Committee, including to ensure that appropriate time and resources are allocated to allow their nominated members to accomplish their tasks as Committee members. In addition to participating in the Committee sessions, the work of the Committee members involves: preparing for the sessions by reviewing the information available on all compliance cases and other agenda items to be considered; and, as an assigned curator for some of the cases, thoroughly analysing them and preparing the related written, in-depth reports in a timely manner. Good preparation for the sessions is a prerequisite for the effectiveness of the Committee’s work. Moreover, consultations in between the ordinary sessions can take place.

(c) Replace the second sentence in paragraph 3 with the following:

“Parts of meetings dealing with compliance matters shall not be open to other Parties or to the public, unless the Committee and the Party whose compliance is in question agree otherwise.”;

(d) Replace paragraph 9 with the following:

At the invitation of the Committee, a Party in respect of which a submission is made or a Committee initiative is opened, or which makes a submission, shall be entitled to attend the Committee’s session and present to the Committee information and opinions on that matter, but shall not take part in its consideration, including the preparation and adoption of any report or of findings and recommendations of the Committee. The Committee may also invite other concerned Parties to attend its sessions in order to present information and opinions, as appropriate. The Committee shall send the draft findings and recommendations to the Parties concerned, and shall take into account any representations from such Parties in their finalization (see also operating rule 11, para. 2).

(e) For the existing text of paragraph 10 substitute:

10. The following rules apply to the participation of the members of the Committee:

(a) Each member should, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflict of interest. Where a member finds himself or herself faced with a direct or indirect conflict of interest, that member should bring the conflict of interest to the attention of the Committee before consideration of that particular matter. The concerned member should not participate in the elaboration and adoption of any part of a report or findings and recommendations of the Committee in relation to that matter;

(b) A member who represents a Party in respect of which a submission is made, or which makes a submission, should not participate in the consideration

by the Committee of that submission or the follow-up to a related decision by the Meeting of the Parties, and should not participate in, or be present during, the preparation and adoption of any part of a report or findings and recommendations of the Committee that relates to that submission. This subparagraph should be applied, *mutatis mutandis*, in the case of a Committee initiative (see also operating rule 5, para. 1).

- (f) In paragraph 11, delete the third and fourth sentence, so that the paragraph reads as follows:

11. The Committee shall report on its activities at each meeting of the Parties through the secretariat and make such recommendations as it considers appropriate, taking into account the circumstances of the matter, regarding compliance with the Convention. Each report shall be finalized by the Committee not later than ten weeks in advance of the session of the Meeting of the Parties at which it is to be considered. Committee reports shall be available to the public.

- (g) Replace paragraph 12 with the following:

“Competence of Committee Members

12. If, as a result of the operation of paragraph 10, the size of the Committee is reduced to fewer than four members, the Committee shall forthwith refer the matter in question to the Meeting of the Parties.”

II. Amendments to the operating rules of the Implementation Committee

2. In the operating rules of the Implementation Committee (decision IV/2, annex IV, as amended by decisions V/4, annex, VI/2, annex II, and VIII/4, annex) amend the following:

- (a) Replace paragraph 1 of rule 4 with the following:

1. The Meeting of the Parties shall elect Parties for serving two terms in the Committee. Each Party elected by the Meeting of the Parties shall appoint a permanent and an alternate member of the Committee for two terms. The term of office of a member shall commence with the appointment by a Party. This paragraph shall 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 permanent or the alternate member.

- (b) Replace paragraph 4 of rule 4 with the following:

4. Committee members elected for Protocol matters only, but representing a Party to both the Protocol and the Convention, shall participate in the consideration and decision-making of an issue relating to compliance with the Convention, provided that there is no objection by a Committee member elected for Convention matters. However, a Committee member elected for Protocol matters should not act as curator for an issue relating to compliance with the Convention. 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. Furthermore, 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).

- (c) Replace rule 5 with the following:

Rule 5

1. If a Party considers that a member of the Implementation Committee is faced with a direct or indirect conflict of interest with respect to a matter

concerning it that is under consideration by the Committee, that Party must raise an objection through the secretariat within two months from the reception of a communication from the Committee and/or the publication of the meeting report on the United Nations Economic Commission for Europe website. The Party shall state the facts giving rise to the objection. A member being the subject of such an objection, if deemed justified by the Committee in accordance with paragraph 10 of its structure and functions, shall not take part when the Committee considers the matter.

2. The members and the secretariat may accept invitations to present the Convention's compliance mechanism at appropriate events, such as conferences and workshops.

- (d) Add a new paragraph 8 at the end of rule 11 as follows:
- “8. Parties are requested to respond to the Committee's requests for information by the deadline set by the Committee. The Committee may disregard any late information.”
- (e) In rule 13, replace paragraph 3 with the following:
- “3. At its meeting following the deadline for comments, the Committee should review and finalize the draft findings and recommendations taking into account the comments received. The findings and recommendations should be prepared as an addendum to the report of the meeting or issued as a separate document (i.e. as an official document), and transmitted to the Parties involved and to the Meeting of the Parties.”
- (f) Insert a new paragraph 4 at the end of rule 13 as follows:
- “4. If, after the transmission of findings and recommendations to the Meeting of the Parties in accordance with rule 13, paragraph 3, substantial information that could have an influence on the findings and recommendations becomes available to the Committee, it may communicate additional information to the Meeting of the Parties and reflect any changes in the corresponding decision on compliance.”
- (g) In rule 16, paragraph 2, add a new sentence at the end of the paragraph:
- “The Committee may disclose further documents, as it deems appropriate.”
- (h) In rule 16, insert, renumbering subsequent paragraphs accordingly, a new paragraph 9 after paragraph 8 as follows:
- “9. In the absence of any reasoned objections from the Party or any other sources concerned, copies of all correspondence between the Party or other sources and the Committee should be made available to other Parties or sources involved in a particular compliance matter and its related Committee proceedings upon their request.”
- (i) Replace paragraphs 1 and 2 of rule 17 with the following:
1. Meetings of the Committee should be open to observers (other Parties, States, bodies, agencies and the public), unless the Committee decides otherwise. Parts of meetings dealing with compliance matters should not be open to observers, unless the Committee and the Party whose compliance is in question agree otherwise (see also para. 3 of the Committee's structure and functions). Observers should register with the secretariat in advance of each meeting.
2. A Party concerned by a particular compliance matter shall not participate in, or be present during, the consideration by the Committee of that matter, including the preparation and adoption of any part of the findings or recommendations of the Committee relating to that matter (see also para. 9 of the Committee's structure and functions).
- (j) Delete paragraph 3 of rule 17.

(k) In rule 18, paragraph 1, second sentence, replace “five” by “four”. In the same paragraph, last sentence, insert “meeting” before “report”.

(l) Replace rule 19 with the following:

Rule 19

1. Meetings of the Committee can be held online.¹
2. In between meetings, electronic means of communication may be used by the members for the purposes of any aspect of the Committee’s work to be discussed at the ordinary session and of conducting informal consultations on issues under consideration in order to ensure efficient management of its workload.
3. The decision-making procedure by electronic means includes:
 - (a) Circulation, at the request of the Chair by the secretariat, of a draft document subject to a decision-making procedure, with an invitation to all Committee members to provide comments to the draft document, or to agree with the Chair’s proposal (also by not replying at all) by the deadline set by the Chair; if specified by the Chair in advance, in the absence of any objections from a member by the deadline set, the proposal is deemed adopted by the Committee;
 - (b) If, based on the comments received, it becomes clear that the matter is not suitable for the decision-making procedure between meetings, the Chair may decide to postpone the decision-making procedure to the next ordinary session.
4. Decisions by electronic means of communication shall be made further to the Committee’s operating rule 18. Any decision made in between ordinary meetings by electronic means of communication shall be reflected in the report of the meeting of the Committee that follows the making of the decision.

¹ Provided that interpretation between English and Russian is not required or is not available, and the meeting is held in English only; or that sufficient financial and secretariat staffing resources are available for organizing meetings with remote simultaneous interpretation.