

Decision V/4 on general issues of compliance with the Protocol

The Meeting of the Parties to the Protocol,

Recalling article 14 (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/6¹ of the Meeting of the Parties to the Convention and the Meeting of the Parties to the Protocol on the application of the compliance procedure of the Convention to the Protocol, and decisions II/2² and III/2³ on review of compliance with the Protocol, as well as decision IV/4⁴ on general issues of compliance with the Protocol,

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 in their regard,

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,⁵ adopted by decision IV/5,⁶

Having considered also the findings and recommendations of the Implementation Committee on two submissions made to the Committee concerning Albania⁷ and Bosnia and Herzegovina,⁸ and on one Committee initiative concerning Serbia,⁹

Having considered further 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,¹⁰ 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),¹¹

Having reviewed the structure and functions¹² of the Committee and its operating rules,¹³

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

Having reviewed the opinions of the Committee,¹⁴

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

¹ ECE/MP.EIA/SEA/2.

² ECE/MP.EIA/20/Add.2–ECE/MP.EIA/SEA/4/Add.2.

³ ECE/MP.EIA/23/Add.3–ECE/MP.EIA/SEA/7/Add.3.

⁴ ECE/MP.EIA/30/Add.3–ECE/MP.EIA/SEA/13/Add.3.

⁵ ECE/MP.EIA/SEA/2020/8.

⁶ ECE/MP.EIA/30/Add.3–ECE/MP.EIA/SEA/13/Add.3.

⁷ ECE/MP.EIA/IC/2023/9.

⁸ ECE/MP.EIA/IC/2023/8, annex II.

⁹ ECE/MP.EIA/IC/2022/5.

¹⁰ ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13,

¹¹ See <https://unece.org/sessions-3>.

¹² 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).

¹³ Decision IV/2, annex IV (ECE/MP.EIA/10), as amended by decisions V/4, annex (ECE/MP.EIA/15), VI/2, annex (ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1) and VIII/4, annex (ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2).

¹⁴ Informal compilation of the opinions of the Implementation Committee up to 2023 (forthcoming).

answers of Parties to the questionnaires on the implementation of the Protocol adopted in decision V/5,¹⁵

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 were 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 of 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 thereto, to ratify them,

1. *Adopts* the report of the Implementation Committee on its activities, 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 to:

- (a) Keep the implementation and application of the Protocol under review;
- (b) Promote and support compliance with the Protocol, including by providing assistance in that regard, 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 Armenia and Bosnia and Herzegovina, resulted in the Committee declaring its satisfaction with the clarifications provided by the Parties concerned;
- (b) 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, noting that the Implementation Committee will finalize its deliberations of the specific compliance issues once the reporting templates have been duly noted by the Meeting of the Parties at its current session;¹⁶

4. *Notes* the examination by the Committee of the specific compliance issues identified in the second review of implementation of the Protocol regarding Serbia,¹⁷ which will require further consideration by the Committee at its upcoming sessions due to the lack of response from the Party concerned;

5. *Also 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;¹⁸

6. *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;¹⁹

¹⁵ ECE/MP.EIA/SEA/2023/9.

¹⁶ ECE/MP.EIA/2023/10–ECE/MP.EIA/SEA/2023/6.

¹⁷ See *Second Review of Implementation of the Protocol on Strategic Environmental Assessment (2013–2015)* (United Nations publication, ECE/MP.EIA/SEA/2017/9).

¹⁸ ECE/MP.EIA/IC/2023/8, annex II.

¹⁹ ECE/MP.EIA/IC/2022/5.

7. *Also 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 grown in number, complexity and scope;

8. *Notes with regret* that the Committee's work continues to be hindered by the lateness and insufficient quality of responses by some Parties concerned, and, in some cases, also by the lack of response and willingness to cooperate;

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;

10. *Considers*, following the opinions of the Committee, that:

(a) When notifying the affected Parties in accordance with article 10 (1) of the Protocol, the Party of origin has an obligation to ensure that said 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;²⁰

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

(i) Send a notification, containing, *inter alia*, information set out in article 10 (2), by email directly to the national point of contact of the affected Party, unless one of the concerned Parties specifically requires that it be sent by post, 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;²¹

(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;²²

(d) At the scoping stage of the strategic environmental assessment, the Party of origin's early notification of (see decision II/7),²³ 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;²⁴

(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

²⁰ *Ibid.*, para. 58.

²¹ *Ibid.*, para. 60.

²² *Ibid.*, para. 63.

²³ ECE/MP.EIA/20/Add.2–ECE/MP.EIA/SEA/4/Add.2.

²⁴ *Ibid.*, para. 67.

draft plan/programme and the environmental report and to provide its comments and opinions to the Party of origin;²⁵

(f) The minimum time frames for the transmission of comments from the affected Party (which, according to the Parties, vary from 30 to 90 days)²⁶ 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, the volume of the documents referred to in article 10 (2) (a) and the time needed for ensuring translation of relevant parts of documents into the national language of the affected Party, as required;²⁷

11. *Considers also*, following the opinion of the Committee, that:

(a) Similarly 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 the time frame suggested by the Party of origin, so as to allow it to proceed with the next steps.²⁸ Otherwise, the absence of a timely response may be understood by the Party of origin as a lack of willingness to participate.²⁹ It is recommended that the Party of origin extend 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);³⁰

(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;³¹

(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 the authorities of the affected Party to participate in the transboundary procedure under the Protocol;³²

(d) The Party of origin should inform an affected Party that, 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;³³

12. *Encourages* Parties to use the format for notification adopted by decision II/7 when notifying affected Parties under the Protocol;³⁴

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 contained in paragraphs 10 and 11 above, and the analyses of general

²⁵ *Ibid.*, para. 71.

²⁶ See *Third Review of Implementation of the Protocol on Strategic Environmental Assessment* (2016–2018) (United Nations publication, ECE/MP.EIA/SEA/14), para. 52 and table 2.

²⁷ ECE/MP.EIA/IC/2022/5, para. 72.

²⁸ ECE/MP.EIA/2017/10, para. 32.

²⁹ ECE/MP.EIA/IC/2018/6, para. 14.

³⁰ ECE/MP.EIA/IC/2022/5, para. 74.

³¹ *Ibid.*, para. 75.

³² *Ibid.*, para. 76.

³³ *Ibid.*, para. 77.

³⁴ ECE/MP.EIA/20/Add.2–ECE/MP.EIA/SEA/4/Add.2, annex.

compliance issues from the reviews of implementation, adopted by decisions II/2,³⁵ III/2³⁶ and IV/4.³⁷

14. *Also 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;

15. *Adopts* the proposed amendments to the structure and functions and operating rules of the Implementation Committee set out in document ECE/MP.EIA/2023/5–ECE/MP.EIA/SEA/2023/5, which should be applied to all meetings and to any other conduct of business of the Committee, and requests the secretariat to arrange the publication of the amended structure and functions and operating rules in electronic format, as an official document;³⁸

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.

³⁵ *Ibid.*

³⁶ ECE/MP.EIA/23/Add.3–ECE/MP.EIA/SEA/7/Add.3.

³⁷ ECE/MP.EIA/30/Add.3–ECE/MP.EIA/SEA/13/Add.3.

³⁸ ECE/MP.EIA/32/Add.2–ECE/MP.EIA/SEA/15/Add.2.