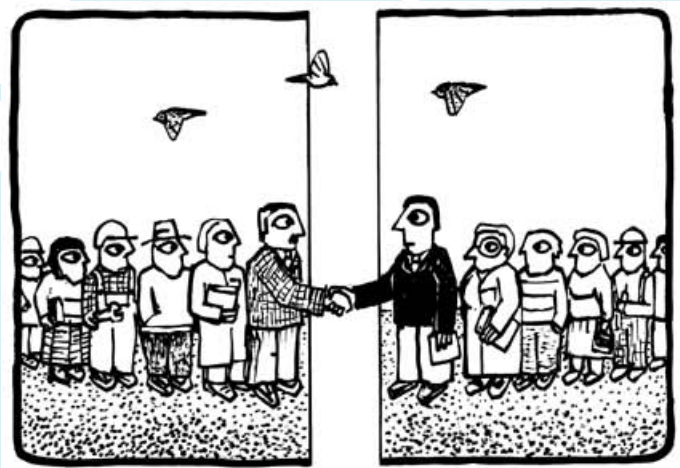


# Implementation Committee/ Review of Compliance under the Espoo Convention and its Protocol on SEA

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# Legal basis for the Implementation Committee / review of compliance

- **For the Convention**, article 11, para. 2 (*implied*),
  - “The Parties shall keep under continuous review the implementation of the Convention...”and article 14 *bis* on the review of compliance (in 2<sup>nd</sup> amendment, decision III/7, 2004)
  - “The Parties shall review compliance with the provisions of this Convention on the basis of compliance procedure, as a **non-adversial and assisted-oriented procedure** adopted by the MoP. The review shall be based on, but not limited to regular reporting by the Parties. The MOP shall decide on the frequency of regular reporting required by the Parties and the information to be included in those regular reports.
- **For the Protocol**, article 14, para. 6
  - which concerns application of procedure for review of compliance with Convention to Protocol
- Decisions of Convention MOP on the Committee
  - Established by decision II/4 (**2001**), replaced by III/2
  - Tasks assigned by decision IV/2 and V/4, and many others
- Decisions of Protocol MOP/MOP
  - Extension of mandate to Protocol by decision I/6

## Procedures and rules for Committee

- Rules of procedure (MOP decision I/1)
- Structure and functions of the Committee and procedures for the review of compliance (MOP decision III/2, appendix)
- Operating rules (MOP decision IV/2, annex IV, and MOP decision V/4, annex)
- Role of curator (*informal*)

Committee's procedural rules are subject to revision based on practice and experience

## Guidance used

- Guidance on practical application of the Convention (ECE/MP.EIA/8)
- Guidance on public participation in transboundary EIA (ECE/MP.EIA/7)
- Guidance on notification for the Convention (ECE/MP.EIA/12)
- Other MOP decisions (e.g. regarding notification format)
- Opinions of the Committee (2001-2010)
- Occasional inspiration from Aarhus Compliance Committee

## Composition of the Committee

- 8 members representing Parties to the Convention and the Protocol elected by the MOP for two intersessional periods
- Chair and vice-Chair elected by the Committee for one term, could be re-elected
- In case a member represents Party only to one of the treaties, additional members need to be nominated
- Current members: from Armenia, Azerbaijan (with Norway as alternate for Protocol matters), Bulgaria, France (with Slovakia as alternate for Protocol matters), the Republic of Moldova (with Poland as alternate for Protocol matters), Romania, Spain, Slovenia.
- Chair: Vesna Kolar-Planinsic (Slovenia), Vice-Chair: Felix Zaharia (Romania)
- Participation of Convention vs. Protocol members (I/6 and V/6; practice by IC)

## Non-compliance

- Failure to **apply** the Convention / Protocol fully
- But also failure to transpose the Convention / Protocol fully into national legislation
  - direct application of Convention / Protocol has been considered inadequate by the Committee – see “Opinions”
- Failure to **report**
  - “may” be non-compliance for Convention (MOP decision IV/2), pending entry into force of second amendment (article 14 *bis*, MOP decision III/7)
  - non-compliance for Protocol (article 14, para. 7)

## Sources/ “triggers” (possible non-compliance)

- Submissions, including self-referral (EIA/IC/S/1..5)
  - Party-to-Party submissions regarding: Ukraine, Romania, Armenia, Belarus and Azerbaijan
  - Expressing concerns about another Party’s compliance with its obligations, backed up by supporting information
  - Party whose compliance is in question has 3 months to reply
  - After consideration, including hearing of Parties, Committee drafts findings and recommendations
  - Draft F&R are finalized taking into account comments or representations provided by Parties
  - MOP adopts a decision on Compliance, endorsing the main findings and recommendations further to a submission

# Sources/ “triggers” (possible non-compliance)

- Committee initiative (EIA/IC/CI/1..4)
  - regarding Armenia and Azerbaijan – further to SCI, offer of assistance
  - Albania – longstanding failure to report
  - Ukraine – further to information gathering
- Information gathering
  - Specific compliance issues in the review of implementation or national reports /completed questionnaires (EIA/IC/SCI/...)
    - First review (EIA/IC/SCI/1/1..4) – led to EIA/IC/CI/1
    - Second review (EIA/IC/SCI/2/1..10) – led to EIA/IC/CI/2
    - Third review (EIA/IC/SCI/3/1...3)
  - Information from other sources, e.g. NGOs and the secretariat (EIA/IC/INFO/1..12) –
    - info 7 re Ukraine led to EIA/IC/CI/4; Info 12 re the UK



## Information from other sources

- Not a “trigger” for a Committee initiative – so unlike “communications from the public” under Aarhus Convention
- For information to lead to a Committee initiative, the following (among other) have to be taken into account by the Committee (operating rule 15, para. 2)
  - The source of the information is known and not anonymous
  - The information relates to activity listed in Convention’s Appendix I likely to have a significant adverse transboundary impact / *Protocol*
  - The information is basis for profound suspicion of non-compliance
  - The information relates to implementation of Convention provisions
  - Committee time and resources are available

## Information gathering vs. Committee initiative

- Once the Committee becomes convinced that there may be an issue of non-compliance (“profound suspicion”) it will begin a Committee initiative
- The Committee has to date been cautious about beginning the Committee initiative, and in the mean time gathers information (typically during 2-3 sessions)
- Meanwhile, the Committee respects confidentiality of information pending a decision on whether to begin a Committee initiative

# Sanctions

- Committee is an assistance-oriented body. No sanctions are identified in the procedures for review of compliance
- To date, Committee has decided on
  - Finding of non-compliance
  - Recommendation to issue a caution
- Other sanctions have been discussed briefly
  - but this was in the light of the Committee finding Ukraine to be in non-compliance
  - Committee concluded that it would be best to discuss sanctions generally, rather than in relation to a specific non-compliance
  - see Vienna Convention on the Law of Treaties (article 60.2?)
- No sanctions ... but Committee still has “teeth”
- MOP-5 mandated IC to consider – if necessary - recommendations on imposition of sanctions, and prepare proposals to MOP-6 (2-5 June 2014)

## For more about the **Espoo** Convention and its **Protocol** on Strategic Environmental Assessment

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- Or email: [eia.conv@unece.org](mailto:eia.conv@unece.org)

