

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,

Recalling also its decisions V/4, paragraphs 31 and 32,¹ VI/2, paragraphs 38–44,² IS/1c³ and VIII/4b⁴ concerning compliance by Azerbaijan with regard to its national legislation for the implementation of the Convention,

Recalling further its decision IX/4⁵ 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

n, 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;¹

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 on Strategic Environmental Assessment, the final two ones in September 2022 that were prepared further to the technical assistance provided to it by the secretariat;⁶

4. **Welcomes also** 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;¹

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

¹ See ECE/MP.EIA/15.

² See ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

³ See ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1.

⁴ See ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2.

⁵ Forthcoming.

⁶ “Regulation on ~~implementation of~~ Conducting the Strategic Environmental Assessment”, adopted on 17 September 2022 by decision No. 354 of the Cabinet of Ministers and “Regulation on ~~implementation of~~ Conducting the Environmental Impact Assessment, including transboundary impact assessment and its duration” adopted on 21 September 2022 by decision No. 362 of the Cabinet of Ministers.

Commented [Ma1]: MOP6. Decision VI/2, para 44 invites the secretariat to offer technical advice to the Government of Azerbaijan. Assistance is provided and recommendation is maintained.

Adopted MOP decisions until today do not require any review by IC regarding the compliance matter with SEA Protocol and its implementation. Herein, acknowledgement of legal assistance is already addressed in general part of this draft decision. Taken steps by the country on SEA Protocol to which it is not a Party may only be welcomed respectively. **We propose to delete this para and amend the para 3.**

Commented [Ma2]: Please see above comment

Commented [Ma3]: Is Committee going to make a use of all translated versions of adopted regulations for its analysis before next IC57 meeting and consider them to contribute to decision-making by IC prior to MOP9? As, IC was provided by specific pieces of regulations addressing particular comments by international expert and the recommendations by MOP decisions.

Commented [Ma4]: This formulation is not correct. Because LAW on EIA is not amended at all since its adoption. Regulations are not amendments due to national legislation, they are legal normative acts which usually are adopted pertinent to the provisions of the Law and having the same legal force as a law. **We propose to delete “the amended framework” phrase in the sentence.**

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;

Espoo Convention Article 1 Definitions (VIII): “Transboundary impact” means any impact, not exclusively of a global nature, within an area under the jurisdiction of a Party caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party”

- (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;

- (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 all relevant secondary legislation, including, once adopted, new amendments to national legislation 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.

Commented [Ma5]: Azerbaijan has begun to develop new amendment drafts to the existing Regulations, with regard to following provisions of Espoo Convention which it considers will resolve below discrepancies revealed by IC and reflected in this draft decision IX/4D. In order to proper address these recommendations, some of them require to be clarified by IC. Please, see below comments

Commented [Ma6]: Could you clear please, on what IC based to come to this conclusion, taken into account of Article 1.4 of “Regulation on Conducting the Environmental Impact Assessment, including transboundary impact assessment and its duration” in generally addressed this, why that was not satisfactory for conclusion on compliance with it?

Article 1.4 says: “The terminology used in this Regulation express the meanings defined by the laws of the Republic of Azerbaijan, international agreements to which the Republic of Azerbaijan is a party, and other normative legal acts of the Republic of Azerbaijan regulating the relations arising in this area.”

Commented [Ma7]: Please, see above comment referring to Article 1.4 of “Regulation on Conducting the

Commented [Ma8]: Accepted and noted

Commented [Ma9]:
Could you please, clarify?
May we refer to Article 6.1 and 6.2 of Espoo Convention on preparing the amendments to legislation?

Commented [Ma10]: “Regulation on Conducting the Environmental Impact Assessment, including transboundary

Commented [Ma11]: Wording is not relevant technically, we suppose.
We propose to replace it with “addressed”

Commented [Ma12]: Requests by relevant MOP Decisions has been mostly addressed by Azerbaijan.

Commented [A13]: It is not correct wording. **We propose to replace it with “adopted law”.** (See related comment above on “amended framework legislation”) Existing law

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Commented [A14]: It is not correct as explained in above comments. “amended legislation” is not correct.

Commented [A15]: New amendments will be prepared for bringing the national legislation in full compliance with Espoo Convention considering the para 5 of this draft