
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 amendment proposals to the Committee's structure and functions¹ and its operating rules²

Note by the Implementation Committee

Summary

This informal document presents initial and unedited amendment proposals to the operating rules and the structure and functions of the Implementation Committee under the Convention on Environmental Impact Assessment and the Protocol on Strategic Environmental Assessment, together with their rationale. It has been prepared by the Implementation Committee in accordance with decision VIII/4 of the Meetings of the Parties to the Convention, decision IV/4 of the Meetings of the Parties to the Protocol and the workplan for 2021–2023.

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 its ninth session, 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 (decision VIII/4).

As requested, during the intersessional period 2021–2023, the Committee reviewed its modus operandi and identified several issues that needed clarification and/or adjustment

¹ 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).

² 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).

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.

This document is submitted for information and possible comments by the delegations before and during the present meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment. For ease of reference, a track changes version of the suggested amendments to the Committee's operating rules and structure and functions is presented in the annex to the present document.

Delegations may wish to submit comments to the proposals in writing by 1 June 2023 for the secretariat to publish on the meeting webpage and to present them orally during the meeting. After the meeting, the Committee will finalize the proposals 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 proposals as an official document for consideration of the Meetings of the Parties at their next sessions (Geneva, 12-15 December 2023).

I. Appointment of Committee Members

1. The Implementation Committee emphasizes the importance 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 Committee members to accomplish their tasks. In addition to participating in the Committee's sessions, which are held, as a rule, three times a year, the Committee members must prepare for them by reviewing the information available on all compliance cases and other agenda items to be considered. Moreover, as assigned curators for some cases, the members are required to thoroughly analyse all information on them and to prepare related written in-depth reports in a timely manner. As required, in-between the sessions, the Committee members may also need to hold online consultations and to take decisions using a written procedure. The Committee stresses that good preparation for the sessions is a prerequisite for the effectiveness of the Committee's work. Practice has shown that preparation for the sessions was often more time-consuming than the participation therein.

2. The second sentence in paragraph 1 (a) of the structure and functions should be amended so that it reads as follows:

“1. (a) The Committee shall consist of eight Parties.¹ Each of the eight Parties shall appoint a permanent and an alternate member of the Committee.”

3. Insert a footnote in paragraph 1 (a) of the structure and functions, 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. A 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.”

4. Delete the third sentence in operating rule 4 paragraph 1 and amend the second sentence in that paragraph so that this sentence reads as follows:

“Each Party elected by the Meeting of the Parties shall appoint a permanent and an alternate member of the Committee for two terms.”

II. Harmonization of rules for decision-making

5. The Committee identified a contradiction between the wording “The Committee shall decide on any report or findings and recommendations by consensus” in paragraph 9 of the structure and functions and the general rule on decision-making in operating rule 18 which reads: “The Committee should make every effort to reach its decisions by consensus. If all efforts to reach a consensus have been exhausted and no agreement has been reached, any other decision should, as a last resort, be taken by a majority vote of the members present and voting, if at least five members are present. For decision-making, each member should have one vote. Where consensus is not possible, the report should reflect the views of all members.”

6. The Committee proposes to delete the wording “decide on the content of any report or findings and recommendations by consensus” in the last sentence of paragraph 9 of the structure and functions as well as the third and fourth sentences in paragraph 11 of the structure in functions, so that henceforth the decision-making process within the Committee is regulated exclusively by operating rule 18.

7. The last sentence in paragraph 9 of the structure and functions should therefore read:

“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).”

III. Entitlement to participate in the Committee’s sessions

8. The current provisions concerning the entitlement of Parties or the public to participate in the Committee’s sessions do not cover all situations where this would be necessary.

9. Paragraph 3 of the structure and functions reads “Parts of meetings dealing with any matter concerning submissions relating to compliance shall not be open to other Parties or the public, unless the Committee and the Party whose compliance is in question agree otherwise”. There is no reason for limiting to submissions this rule, which should cover all Committee’s deliberations concerning compliance matters such as information gathering or Committee initiatives.

10. Amend paragraph 3 of the structure and functions so that it reads:

“3. Committee meetings shall be open to other Parties and the public, unless the Committee decides otherwise. 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.”

11. Amend operating rule 17, paragraph 1 so that it reads:

“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 paragraph 3 of the Committee’s structure and functions). Observers should register with the secretariat in advance of each meeting.”

12. According to the current wording of operating rule 17 paragraphs 2 and 3, a Party in respect of which a submission is made or which makes a submission and in respect of which a Committee initiative has been initiated shall never participate in or be present during the consideration of the Committee of that matter. This should be amended: Rule 17 should apply to all proceedings concerning the compliance of a certain Party and thus cover also the stage of information gathering.

13. The Committee therefore proposes to amend operating rule 17 paragraph 2 so that it reads:

“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).”

14. Operating rule 17 paragraph 3 should be deleted.

15. As an exception to the rule restricting the participation of a concerned Party in the Committee’s consideration of compliance matters, paragraph 9 of the structure and functions provides for the participation of Parties in respect of which a submission is made or which make a submission, at the invitation of the Committee (in “hearings” held during the Committee’s sessions). There is no reason why this provision should not be applicable also to Committee initiatives. The concerned Party should be allowed to attend these proceedings as well. Furthermore, the practice of the Committee to invite other concerned Parties (especially possibly affected Parties) to those hearings should be reflected in the rules.

16. Therefore, amend paragraph 9 of the structure and functions so that the first two sentences of this paragraph read:

“9. At the invitation of the Committee, a Party in respect of which a submission is made or a Committee initiative 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 invite other concerned Parties as appropriate.”

IV. Conflict of interest and quorum

17. At its fifty-first session (Geneva, 4–7 October 2021) the Committee observed that nuclear related cases, including lifetime extension of nuclear power plants, involve a multitude of concerned Parties. Due to that fact, a majority of the Committee members would find that they had a direct or indirect conflict of interest with respect to several of the issues in question. The Committee considered that, in order to fulfil its mandate, it should proceed with its consideration of the cases in an objective and unbiased manner, involving the maximum number of its members. It emphasized that some of the cases had been before it since 2014 and that, during the intersessional period 2017–2020, its conclusions on those cases had been further delayed pending the preparation of guidance on the applicability of the Convention to the lifetime extension of nuclear power plants, endorsed by the Meetings of the Parties to the Convention in December 2020. Consequently, with respect to situations of conflict of interest, the Committee decided to exceptionally and provisionally abstain from applying rule 5 of its operating rules, unless the Committee members in question chose, nevertheless, not to take part in the Committee’s related deliberations. The Committee believed that such an approach provided for its most unbiased deliberations on the cases given the representation in its current composition of Parties that used nuclear power and Parties that did not. The Committee also decided to prepare proposals to the Meetings of the Parties for amending its modus operandi based on the experience it had gained.³

18. The potential difficulties for the Committee to meet its quorum rules concern mainly the numerous current and future nuclear power plant related cases. As the operation of nuclear power plants may affect a wide area and concern multiple Parties, there are practical reasons to apply special rules for these cases. On the other hand, the rules on conflict of interest are critical for the reputation and credibility of the Committee as an objective body.

19. The different rules that address the conflict of interest are spread over several provisions: paragraph 10 of the structure and functions and operating rule 5. Operating rule 4 paragraph 4 also refers to these provisions.

20. The Committee suggests a set of proposals to address this issue. The first proposal is to merge paragraph 10 of the structure and functions with operating rule 5, leaving the main provision only in paragraph 10 of the structure and functions with the wording of the former operating rule 5.

21. Paragraph 10 of the structure and functions should read:

“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 that 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

³ See ECE/MP.EIA/IC/2021/6, paras 56-58.

adoption of any part of a report or findings and recommendations of the Committee that relates to that submission. This paragraph should be applied, *mutatis mutandis*, in the case of a Committee initiative (see also operating rule 5 para. 1)."

22. In this respect it is necessary to emphasize that the new paragraph 10 of the structure and functions should be interpreted in such a manner as to disqualify the participation of members that are appointed by the Party of origin and members appointed by a Party that has been actively engaged in the information gathering phase. On the other hand, treating all potentially affected Parties in an identical way as the Party of origin or as a Party that has made a submission, seems not to be reasonable. The potentially affected Parties often represent a wide range of interests, from those that do not wish to participate in a transboundary environmental assessment procedure of a proposed activity in question to those that want to be consulted by the Party of origin and those that oppose the project in question but have not referred the matter to the Committee. In such a situation, the individual Committee member may abstain from participating, depending on his or her previous involvement in any procedures regarding the particular project. Further, as a proposed new provision, Parties should have the opportunity to express their objections regarding the participation of Committee members at an early stage. It ought to be then up to a Party to object the participation of a Committee member appointed by a specific Party. This procedure should be included as a new paragraph 1 of operating rule 5 and the current paragraph 3 should be maintained as a new paragraph 2.

23. Operating rule 5 should read:

"Rule 5

1. If a Party considers that a member of the Implementation Committee is in 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 ECE 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 might accept invitations to present the Convention's compliance mechanism at appropriate events, such as conferences and workshops."

24. A second tool for enhancing the stability and capacity of the Committee to act is to strengthen the role of the Committee members elected for Protocol matters only. The current operating rule 4, paragraph 4, allows Committee members elected for Protocol matters only to participate in the consideration 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 take part in decision making concerning Convention matters and should not act as curator for an issue relating to compliance with the Convention, but might provide information, opinions and advice.

25. The Committee proposes to amend this rule so that the Committee members who represent Parties to the Convention and the Protocol but are elected for Protocol matters only should be permitted to participate in the considerations and decision making, provided that there is no objection by a Committee member elected for Convention matters and vice versa.

26. Operating rule 4 paragraph 4 should read:

"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. Further, 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)."

27. As a third measure to enhance its stability and capacity to act, the Committee proposes to lower the quorum necessary for decision making in order to avoid a situation when the matter in question would have to be referred to the Meetings of the Parties. Given the fact that the Meetings of the Parties have no means to effectively carry out review of compliance procedures and that their sessions are convened only every three years, the existing provision in paragraph 12 of the structure and functions does not provide an adequate solution to the problem.

28. Paragraph 12 structure and functions should read:

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

29. In this respect the quorum has to be adapted also in operating rule 18 paragraph 1, so that this rule should read:

"Rule 18

1. The Committee should make every effort to reach its decisions by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, any other decision should, as a last resort, be taken by a majority vote of the members present and voting, if at least four members are present. For decision-making, each member should have one vote. Where consensus is not possible, the meeting report should reflect the views of all members."

V. Publication of documents

30. The Committee noted that its operating rules, which guided the Committee in the execution of its functions, did not cover ad hoc sessions nor provide for the publication of informal documents, including reports of ad hoc sessions. It agreed that it could be useful to develop a rule that would enable the publication of such documents in certain circumstances.

31. The Committee also considered that correspondence from Parties to the Committee regarding compliance matters should be made available to all Parties concerned, whenever necessary. That would promote transparency and consistency and would increase the efficiency of the Committee's work. Moreover, correspondence further to information from other sources, such as NGOs, should be shared with the Parties concerned, based on the correspondent's consent.

32. Operating rule 16 paragraph 2 should read:

"Rule 16

2. Meeting reports, together with other related official documents (other than confidential items), should be publicly available on the Convention website once agreed by the Committee. The Committee may disclose further documents as it deems appropriate."

33. A new paragraph 9 should be inserted in operating rule 16:

"9. In the absence of any reasoned objections from the Party or other source concerned, copies of all correspondence between the Party or another source 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."

VI. Use of electronic means of communication

34. Due to the increasing number and complexity of issues brought before the Committee, the Committee considered possibilities to improve the effectiveness of its work by providing for regular virtual meetings and generally for an extended use of electronic means of communication. This proposal reflects the practise of the Committee in particular since the outbreak of the Covid pandemic.

35. Operating rule 19 should read:

“Rule 19

1. Meetings of the Committee can be held online.⁴

2. In between meetings, electronic means of communication might be used by the members for the purpose of any aspect of the Committee’s work that would 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 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 set deadline by the Chair; if specified by the chair in advance, in absence of any objections of a member by the set deadline, 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 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 taken further to the Committee’s operating rule 18. Any decision taken in between ordinary meetings by electronic means of communication shall be reflected in the report of the meeting of the Committee that follows the taking of the decision.”

VII. Additional recommendations regarding a Party’s follow-up on recommendations

36. The operating rules of the Committee lack clarity on the procedure to be followed when adopting additional recommendations regarding a Party’s follow-up on recommendations that have not yet been endorsed by the Meetings of the Parties. The proposed amendment is intended to allow the Committee to prepare more up-to-date decisions and to avoid submissions against the findings and recommendations that do not reflect the latest developments regarding the compliance matter.

37. Insert a new paragraph 4 in operating rule 13 that should read:

“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.”

38. According to current practice, the Committee’s findings and recommendations further to a submission or a Committee Initiative can be issued not only as an addendum to the report of the meeting (as previously stated), but as a separate official document. This is

⁴ Provided that interpretation between English and Russian is not needed or 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.

due to the increased number of cases before the Committee and the word limit for official documents.

39. Operating rule 13 paragraph 3 should read:

“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.”

VIII. Timeliness of Parties’ responses

40. The Committee stressed that respect for deadlines by the concerned Parties was crucial when providing information, responding to the Committee’s inquiries and delivering progress reports. Late submission of information or submission of information of insufficient quality by the Parties concerned significantly hindered the Committee’s work.

41. Further to decision IV/4, para. 99 of the Meeting of the Parties which urges Parties to facilitate the Committee’s work in good faith by providing it with the requested information in a timely manner and in good quality, the Committee proposes to state explicitly that if a Party does not provide information, the Committee is free to disregard any late information.

42. In operating rule 11 a new paragraph 8 should be added that would read:

“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.”
