

**Report of the Chair of the Implementation Committee under the Convention  
and the Protocol at the 12th meeting of the Working Group on EIA and SEA  
Geneva (13-15 June 2023)**

**Agenda item 5      Compliance and implementation**

**a) Review of compliance and related draft decisions**

Tentative timing: Wednesday, 14 June, noon–1 p.m. and 3–4 p.m.

The Chair of the Implementation Committee is expected to present the main outcomes of the Committee's fifty-fifth (Geneva (online), 31 January-3 February 2023) and fifty-sixth session (Geneva, 2–5 May 2023) and the main objectives of its fifty-seventh session (Geneva, 29 August–1 September 2023). Specifically, he, and, where relevant, the Vice-Chair of the Committee, will present initial draft decisions on compliance with the Convention and the Protocol, including amendment proposals to the Committee's structure and functions and operating rules.

Delegations may wish to comment on the draft decisions. The Working Group will be invited to comment and take note of the report.

**I. Main outcomes of the Committee's fifty-fifth and fifty-sixth sessions**

Since the eleventh meeting of the Working Group in December 2022, the Committee held two sessions: The fifty-fifth session took place online from 31 January to 3 February 2023, and the fifty-sixth session in person in Geneva from 2 to 5 May 2023. During these sessions, the Committee considered 19 and 22 compliance issues, respectively, prepared 11 initial draft decisions on compliance (see under II below), reviewed its structures and functions and operating rules (see under III below) and finalized the draft templates for the European Union to report under the Convention and the Protocol. At its fifty-sixth session, it held informal consultations with Ukraine on five compliance issues that have been put on hold after the military invasion of Ukraine by the Russian Federation in February 2022.

The details on the outcomes of the Committee's work during its fifty-fifth and fifty-sixth session are provided in the Committee's reports on the sessions, available on the UNECE website, following the link: <https://unece.org/sessions-3>.

Late responses from Parties concerned

In several specific compliance cases the Committee encountered difficulties in obtaining replies from the Parties to its requests for information. This concerned specifically Kyrgyzstan, North Macedonia and Serbia. The Committee once again wants to remind all Parties concerned of their responsibility to provide the Committee with the requested information in a timely and complete manner (as expressed by the MOP in its decision IV/4). The Committee would appreciate the Working Group to issue a firm appeal to Parties to respond promptly to the Committee's requests for information.

## **II. Preparation of the initial draft decisions on compliance with the Convention and the Protocol**

The Committee, at its fifty-fifth and fifty-sixth sessions in February and May 2023, respectively, prepared the initial draft decisions on compliance with the Convention and the Protocol as presented in [Informal document ECE/MP.EIA/WG.2/2023/INF.10](#), containing:

- (a) Two decisions on general issues of compliance with the treaties:
  - 1. Draft decision IX/4 on general issues of compliance with the Convention;
  - 2. Draft decision V/4 on general issues of compliance with the Protocol;
- (b) nine country-specific compliance decisions.

A few further draft decisions will be prepared at the Committee's next session, that could not be tabled for information of the Working Group, due to new last-minute information or still missing information.

*In the following, for information to the WG, a non-exhaustive summary of each draft decision is provided. The summary starts with the two decisions on general issues of compliance.*

### ***Draft decision IX/4 on general issues of compliance with the Convention and Draft decision V/4 on general issues of compliance with the Protocol***

Draft decisions IX/4 and V/4 on general issues of compliance with the Convention and the Protocol, respectively, follow the structure of previous MOP decisions/sections on general compliance matters. As per usual, their preamble recalls the related decisions taken by the Meetings of the Parties.

In the initial operative paragraphs, the Committee recommends that the MOPs reiterate their requests to the Committee to continue:

- (a) To keep the implementation and application of the Convention/Protocol under review;
- (b) To promote and support compliance with the Convention/Protocol, including by providing assistance in this respect, as necessary.

In the subsequent operative paragraphs (paras. 2-9 of draft decision IX/4 and paras. 2-7 of draft decision V/4), the Committee recommends that the MoPs acknowledge the outcomes of the Committee's work in the intersessional period 2021-2023 further to the Committee's report to the MOPs, including with regard to follow-up to previous decisions, submissions, Committee initiatives, information gathering procedures and specific compliance issues.

Paragraphs 12-14 of draft decision IX/4 and paragraphs 10-11 of draft decision V/4 recommend the MoPs to consider the Committee's opinions generated since its previous session. A selection of opinions are highlighted in these sections of the draft decisions.

Last but one paragraph of both draft decisions IX/4 and V/4 refers to the amendments to the operating rules and the structures and functions of the Committee, and the final paragraph of both draft decision includes a mandate to the Committee to keep these rules under review.

*Turning now to the country-specific compliance decisions, starting with the draft decisions on compliance with the **Convention and the Protocol**.*

**1. Draft decision IX/4a-V/4a on compliance by Albania with its obligation under the Convention and the Protocol with respect to the planned construction of several small hydropower plants on the Cijevna River**

This draft decision is the result of a submission by Montenegro made in 2019.

As the proposed activities, the construction of small hydropower plants, are not listed in appendix I to the Convention or in annex I to the Protocol, the Committee examined the application of article 2 (5) of the Convention.

The Committee found that Albania and Montenegro fulfilled their obligations under article 2 (5) of the Convention. It did not find Albania in non-compliance with articles 2 (2) and (6) of the Convention, and article 10 of the Protocol, as these provisions were not applicable.

The Committee suggested several recommendations to the concerned Parties to strengthen their dialogue.

**2. Draft decision IX/4c-V/4c on compliance by Bosnia and Herzegovina with its obligations under the Convention and the Protocol with respect to the construction of Buk Bijela hydropower plant on the Drina River**

This draft decision is the result of a submission by Montenegro made in 2020.

The Committee found that Bosnia and Herzegovina failed to fulfil its obligations under articles 2 (4) and 3 (1) of the Convention by not notifying Montenegro regarding the activity in 2012. However, the Committee found that Bosnia and Herzegovina did not fail to comply with its obligations under articles 2 (2)–(3) and 4 (1) of the Convention when it issued a new environmental permit in 2019.

The Committee further found that the Protocol was not applicable.

The Committee suggested several recommendations for the bilateral cooperation between Bosnia and Herzegovina and Montenegro in the context of an already established joint working group.

*Turning now to the draft decisions on compliance with the Convention.*

**1. Draft decision IX/4d on compliance by Azerbaijan with its obligations under the Convention in respect of its national legislation**

This is a draft decision on follow-up to decisions IS/1 c and VIII/4b by which the Convention's MOP urged Azerbaijan to ensure that its environmental impact assessment legislation fully complies with the Convention and requested the Committee to evaluate the compliance of the environmental impact assessment legislation of Azerbaijan with the Convention.

The Committee noted that Azerbaijan had adopted six pieces of secondary legislation to implement its 2018 framework Law on EIA, out of which only two pieces have been provided in their English translation to the Committee.

The Committee also noted some specific deficiencies of the Law on EIA and the two pieces of secondary legislation, notably, including concerning:

- (a) the definition of impact is not in line with article 1 (viii) of the Convention,
- (b) the definition of the proposed activity is not fully compliant with the Convention.

The Committee found that Azerbaijan, despite steps taken, has not yet fulfilled the requests addressed to it in decisions VIII/4b, IS/1c and VI/2.

It also found it regretful, 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.

## ***2. Draft decision IX/4e on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets***

This is a draft decision to follow-up on decisions VI/2, IS/1d and VIII/4c. By decision VIII/4c the Meeting of the Parties encouraged both Parties to conclude a bilateral agreement, to carry out a post-project analysis, and to continue bilateral expert consultations on issues of disagreement.

Since the 8th session of the Meeting of the Parties, Belarus and Lithuania submitted to the Committee their annual reports further to paragraph 20 of decision IS/1d. They held only one bilateral expert meeting and said meeting's outcomes had still not been agreed at the current time. The Committee conducted informal online consultations with the two Parties in October 2022.

The Committee found the lack of progress by the Parties concerned since 2014 in implementing previous MOP decisions regretful. It suggests urging both Parties to complete the actions from previous MOP decisions and to continue reporting on progress annually.

## ***3. Draft decision IX/4g on compliance by Belgium with its obligations under the Convention in respect of the lifetime extension of Tihange nuclear power plant***

*To be presented by the first Vice-Chair of the Committee*

This draft decision is the result of a Committee initiative, opened in 2022, based on the information made available to the Committee since 2016 by two German Federal States and the concerned Parties. The Committee conducted hearings with the concerned Parties at its fifty-fourth session (Geneva (hybrid), 4-7 October 2022).

As recommended by the Meeting of the Parties at its eighth session, the Committee considers the Guidance on the Applicability of the Convention to the Lifetime Extension of Nuclear Power Plants when performing its functions. The Committee stresses that the Guidance only interprets the Convention to support its practical application. It neither imposes new obligations on the Parties nor expands the application of the Convention's articles. It does so with a view to ensuring consistent interpretation of the Convention regarding new and pending lifetime

extension cases. Therefore, the Committee also considers the Guidance in cases that were already under its review.

The Committee found that Belgium was in non-compliance with articles 2 (3) and 3 (1) of the Convention by extending the lifetime of unit 1 of Tihange nuclear power plant and preparing the unit for long-term operation without applying the Convention.

It welcomed the fact that Belgium committed itself to notifying possibly affected Parties in accordance with article 3 (1) of the Convention ahead of any future lifetime extension of other units of Tihange nuclear power plant.

The Committee suggested several recommendations to Belgium in the context of any future decision-making regarding Tihange nuclear power plant and to follow the Good Practice Recommendations on the Application of the Convention to Nuclear Energy-related Activities, endorsed by the Meeting of the Parties.

#### ***4. Draft decision IX/4h on compliance by Bulgaria with its obligations under the Convention with respect to the lifetime extension of units 5 and 6 of Kozloduy nuclear power plant***

This draft decision is the result of a Committee initiative, opened in 2022, based on the information made available to the Committee since 2018 by a Romanian NGO and the concerned Parties. The Committee conducted hearings with Austria, Bulgaria, Romania and Serbia at its fifty-third session (Geneva (online), 10–13 May 2022).

The Committee noted with regret the uncooperativeness of Bulgaria with regard to providing it with the information and documentation needed for its deliberations, requiring it to repeatedly request such information and documentation.

When examining the application of the relevant provisions of the Convention, the Committee considered the Guidance on the Applicability of the Convention to the Lifetime Extension of Nuclear Power Plants.

The Committee found that Bulgaria was in non-compliance with articles 2 (3) and 3 (1) of the Convention by extending the lifetime of units 5 and 6 of Kozloduy nuclear power plant and preparing the units for long-term operation without applying the Convention.

It welcomed the fact that Bulgaria committed itself to notifying Austria, Romania and Serbia ahead of any future lifetime extension for units 5 and 6 of Kozloduy nuclear power plant in accordance with article 3 (1) of the Convention.

The Committee suggested several recommendations to Bulgaria in the context of any future decision-making regarding Kozloduy nuclear power plant and to follow the Good Practice Recommendations on the Application of the Convention to Nuclear Energy-related Activities, endorsed by the Meeting of the Parties.

#### ***5. Draft decision IX/4i on compliance by Czechia with its obligations under the Convention in respect of the lifetime extension of Dukovany nuclear power plant***

This draft decision is the result of a Committee initiative, opened in 2022, based on the information made available to the Committee since 2016 by 5 NGOs and the concerned Parties.

The Committee conducted hearings with Austria, Czechia and Germany at its fifty-fourth session (Geneva (hybrid) 4 -7 October 2022).

When examining the application of the relevant provisions of the Convention, the Committee considered the Guidance on the Applicability of the Convention to the Lifetime Extension of Nuclear Power Plants.

The Committee found that Czechia was in non-compliance with articles 2 (3) and 3 (1) of the Convention when extending the lifetime of units 1-4 of Dukovany nuclear power plant and preparing the units for long-term operation without applying the Convention.

It welcomed the fact that Czechia committed to notifying Austria and Germany ahead of future lifetime extensions of nuclear power plants or significant changes in the licences of the operating units of the nuclear power plants in its territory.

The Committee invited Czechia to continue bilateral consultations and cooperation with Austria and Germany regarding the Dukovany and Temelin nuclear power plants and encouraged Czechia to prepare bilateral agreements.

It also suggested Czechia to follow the Good Practice Recommendations on the Application of the Convention to Nuclear Energy-related Activities.

***6. Draft decision IX/4j on compliance by Serbia with its obligations under the Convention with respect to several mining-related activities in Karamanica, Popovica and Podvirovi and the Grot mine***

This draft decision is the result of a submission made by Bulgaria in 2019.

The Committee found that Serbia complied with the Convention concerning the Karamanica pilot facility and the expansion of the exploitation of the Podvirovi and Popovica mining sites by notifying Bulgaria about the proposed activity at the Grot mine in 2009.

However, the Committee found that Serbia failed to comply with the Convention in 2019 by not notifying Bulgaria regarding the major change to the activity.

The Committee also found that Bulgaria failed to fulfil its obligations under the Convention by not responding to the notification of Serbia within the time specified in the notification.

The Committee requested Bulgaria and Serbia to ensure that the public of Bulgaria is given an opportunity to participate in the ongoing transboundary procedure regarding the Karamanica permanent flotation plant.

It also requested Serbia to ensure that the Convention is fully applied in the context of any future decision-making regarding planned mining activities, and that the cumulative impact from the new and already existing mining activities, as well as the cumulative impact of other activities affecting the conditions in the water system are properly taken into account.

The Committee also made recommendations to incorporate specific elements into a bilateral agreement between the Parties concerned.

*Turning now to the draft decision on compliance with the Protocol.*

**1. Draft decision V/4d on compliance by Serbia with its obligations under the Protocol in respect of the Energy Sector Development Strategy of the Republic of Serbia for the Period up to 2025 with Projections up to 2030 and the Programme for the Implementation of the Strategy for the Period 2017–2023**

This draft decision is the result of information gathered by the Committee since 2014, following information provided by a non-governmental organization (Bankwatch Romania) to the Committee.

The Committee found that Serbia was in non-compliance with its obligations under article 3 (1) of the Protocol regarding legislative, regulatory and other measures to ensure proper implementation of article 10 of the Protocol regarding transboundary consultations and article 11 on decision-making and informing the Parties consulted about the decision.

It also found that Serbia was in non-compliance with its obligations under the Protocol concerning the Energy Sector Development Strategy for not having notified Croatia, Hungary and Romania.

The Committee suggested several recommendations to Serbia and requested yearly progress reports.

Next steps

The Committee will finalize the draft decisions at its fifty-seventh session in August/September 2023, taking into account the comments by the Working Group along with the comments provided by the Parties concerned. The secretariat will then prepare the draft decisions as official documents (deadline – 19 September 2023).

### **III. Revision of the Committee's structure and functions and operating rules**

At its fifty-sixth session the Committee continued its review of its structures and functions and operating rules, and agreed on a proposal for possible amendments, for consideration and adoption by the MOPs. This proposal is contained in informal document 10, addendum 1, containing also a rationale ([https://unece.org/sites/default/files/2023-05/ece\\_mp.eia\\_wg.2\\_2023\\_inf.10\\_add.1.pdf](https://unece.org/sites/default/files/2023-05/ece_mp.eia_wg.2_2023_inf.10_add.1.pdf)) and in the annex to addendum 1, containing the amendment proposals in track changes ([https://unece.org/sites/default/files/2023-05/ece\\_mp.eia\\_wg.2\\_2023\\_inf.10\\_add.1\\_annex\\_0.pdf](https://unece.org/sites/default/files/2023-05/ece_mp.eia_wg.2_2023_inf.10_add.1_annex_0.pdf)). This second document is a working tool, to illustrate the proposed changes more easily, it won't be submitted to the MOPs.

The Committee identified eight key topics that needed clarification and/or adjustment, as follows.

*The Chair of the Committee will pause after each topic to allow for comments.*

**1. Appointment of Committee Members**

Parties should understand their obligations when nominating representatives to serve on the Committee. A new footnote is suggested to improve the understanding.

## 2. Harmonization of rules for decision-making

The Committee identified a contradiction between the general rule on decision-making and a specific provision on the adoption of reports and findings and recommendations. It suggests the uniform use of the general rule on decision-making (by consensus, last resort by majority-vote).

## 3. Entitlement to participate in the Committee's session

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, as they are limited to submissions. The Committee suggests the same rules governing the participation of Parties or the public for all its deliberations, such as information gathering or Committee initiatives. Similarly, the Committee suggests reflecting in the rules the practice of the Committee to organize "hearings" not only for submissions, but for all its proceedings.

## 4. Conflict of interest and quorum

In the Committee's experience, the present rules are no longer adapted for the consideration of the hugely increased compliance matters relating to nuclear matters, which often involve a multitude of potentially affected Parties (some Parties of origin have even notified all the Convention Parties, some others all the EU member States). As a result, in some of the cases before the Committee, a majority of Committee members would be at least in an indirect conflict of interest, preventing the Committee to reach the quorum of five members. Referring the matter to the MOP, as the rules currently foresee, is not practicable, as the MOP meets only every three years.

Consequently, as indicated already several times, the Committee decided at its fifty-first session to exceptionally and provisionally abstain from applying rule 5 of its operating rules (51st session, 4-7 October 2021, ECE/MP.EIA/IC/2021/6, paras. 56-58).

To solve the problem for the future, the Committee suggests a set of proposals.

First, as the rules governing conflict of interest are spread over different provisions, more technically, 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. The Committee also offers an interpretation of the new paragraph 10 of the structures and functions. In addition, the Committee suggests a new provision for Parties to give them the opportunity to express their objections regarding the participation of Committee members at an early stage, based on reasonable grounds.

Second, to strengthen the role of the Committee members elected for Protocol matters only. 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.

As a third measure to enhance its stability and capacity to act, the Committee proposes to lower the quorum necessary for decision making to four members 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.

#### 5. Publication of documents

The Committee suggests introducing a rule to enable the publication of reports of ad hoc sessions and informal documents. It further suggests making copies of all correspondence between the Party or another source and the Committee available to other Parties upon request, in the absence of reasoned objections.

#### 6. Use of electronic means of communication

The Committee proposes a new rule to provide 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.

#### 7. Additional recommendations regarding a Party's follow-up on recommendations

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.

#### 8. Timeliness of Parties' responses

The Committee's work is significantly hindered by late submission of information or submission of information of insufficient quality by the Parties. The Committee proposes to state explicitly that if a Party does not provide information, the Committee is free to disregard any late information.

#### Next steps:

The Committee will finalize its proposal at its next session, considering possible comments from the delegations at the current meeting of the Working Group, as it deems appropriate.

### **IV. Main objectives of the Committee's fifty-seventh session (29 August – 1 September 2023)**

At the Committee's next session, it will finalize its preparations for the next sessions of the Meetings of the Parties and continue to consider outstanding issues on its agenda, including to:

- finalize the draft decisions considering the comments to be received from the Parties concerned in advance of that session and prepare those draft decisions where information from Parties concerned so far is pending;
- complete the Committee's report on its activities during the 2021–2023 intersessional period;
- follow up on actions further to MOP decisions to be taken by Armenia, Azerbaijan, Belarus and Ukraine, respectively;

- begin its consideration of a new submission made by Belarus on 12 April 2023, expressing concerns about the compliance by Poland with its obligations under the Convention with respect to the construction of a barrier on the territory of the transboundary UNESCO World Heritage Site “Bialowieza Forest”;
- continue the consideration of one Committee initiative concerning Ukraine;
- finalize the draft findings and recommendations on one Committee initiative concerning Belarus;
- continue the consideration of two information gathering procedures regarding Ukraine;
- consider three lifetime extension cases of nuclear power plants (concerning Netherlands, France and Ukraine);
- finalize its review of its structure and functions and operating rules, and submit its proposals for possible amendments for consideration by the Meetings of the Parties at their next sessions.

For more information, see here the [Annotated provisional agenda for the fifty-seventh session | UNECE](#).