

Economic Commission for Europe / Environment

Informal network of the Chairs of compliance/implementation bodies
under the Multilateral Environmental Agreements
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**Note prepared by the Chair
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with the assistance of the secretariat**

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Introduction

The compliance and implementation bodies under the ECE multilateral environmental agreements (MEAs) are quite different with respect to their mandate, structure and functions. The purpose of the informal network of these bodies through the Chairs is to allow for exchange of information and lessons learned, with the objective of developing operational procedures through successful examples of other bodies and ultimately exploring ways for improved implementation of the MEAs in the region.

In addition to discussing updates in the compliance and implementation bodies, it is proposed that at its third meeting, the following will be discussed:

1. Methods and processes for examining non-compliance;
2. Reactions and responses to findings and recommendations; improving; compliance and implementation;
3. Intellectual property rights and related issues;
4. Non-compliance, capacity building and facilitation;
5. Transboundary obligations and transboundary dimensions of compliance.

The aim of the present note is not to provide direct answers to the above, but to present an overview of information that may be useful for the Chairs in considering these issues. The information is further exemplified by the attached table.

AIR Convention and its Protocols

The 1979 Convention on Long-range Transboundary Air Pollution (Air Convention) (entered into force on 16 March 1983) is the first MEA negotiated under the auspices of the UNECE. Parties undertake to endeavor to limit and, as far as possible, gradually reduce and prevent air pollution including long-range transboundary air pollution, through scientific collaboration and policy negotiation. In particular, Parties undertake to develop policies and strategies to combat the discharge of air pollutants through exchange of information, consultation, research and monitoring.

The Convention serves as a framework Convention that has been supplemented by eight protocols, all of which are in force, and identify specific measures to be taken by Parties to cut their emissions of air pollutants:

1. The 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone (Gothenburg Protocol) (entered into force on 17 May 2005).
2. The 1998 Protocol on Persistent Organic Pollutants (POPs) (entered into force on 23 October 2003).
3. The 1998 Protocol on Heavy Metals (entered into force on 29 December 2003).
4. The 1994 Protocol on Further Reduction of Sulphur Emissions (entered into force 5 August 1998).
5. The 1991 Protocol concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes (entered into force 29 September 1997).
6. The 1988 Protocol concerning the Control of Nitrogen Oxides or their Transboundary Fluxes (entered into force 14 February 1991).

7. The 1985 Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent (entered into force 2 September 1987).
8. The 1984 Protocol on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP) (entered into force 28 January 1988).

The Protocol on POPs was amended in 2009 while the amendments to the Protocol on Heavy Metals and the Gothenburg Protocol were adopted in 2012. Those amendments are not yet in force.

Implementation Committee under the Convention and the Protocols

The Implementation Committee was established in 1997 to review compliance by Parties with their obligations under the protocols to the Convention. At the recommendation of the Committee, the Executive Body at its thirty-first session (Geneva, 11-13 December 2012), adopted decision 2012/25 on improving the functioning of the Implementation Committee.

The Committee consists of nine Parties to the Convention. Members of the Committee are therefore State representatives rather than individuals acting in their personal capacity. Each member must also be Party to at least one of the Protocols. From 1 February 2017, each member should be Party to at least one of the following Protocols: the Protocol on Heavy Metals, the Protocol on POPs and the Gothenburg Protocol. It is expected, that until this rule becomes operational, most States of the Eastern parts of the region will join at least one of those Protocols. In appointing Committee members, the Executive Body should take into account geographical representation as well as a mixture of technical and legal expertise. A member is elected for a term of two years, renewable once, unless otherwise decided by the Executive Body. The Executive Body elects the Chair of the Committee among the members for a term of two years, renewable once unless otherwise decided by the Executive Body.

The Committee:

- (i) reviews periodically compliance with Parties' reporting requirements under the protocols (the review of the obligation to report emission data is based on the emission data submitted to EMEP and available on a database at www.ceip.at);
- (ii) considers any submission or referral of possible non-compliance by an individual Party with any of its obligations under a given protocol;
- (iii) considers, as necessary, systemic issues relating to compliance that have been identified in the course of its work;
- (iv) Prepares, at the request of the Executive Body, a report on compliance with or implementation of specific obligations in an individual protocol.

Submissions may be received from a Party concerning its own compliance or concerning the compliance of another Party. In addition, the Committee may consider referrals from the secretariat, in particular on the basis of reporting by Parties or information received from technical bodies under the Convention. Since the adoption of decision 2012/25, "where the secretariat, in particular upon reviewing the reports submitted in accordance with a protocol's reporting requirements or on receipt of information from a technical body or centre under the Convention, becomes aware of possible non-compliance by a Party with any of its obligations, it shall promptly request the Party concerned to furnish necessary information

about the matter. If there is no response or the matter is not resolved within three months or such longer period as the circumstances of the matter may require, the secretariat shall bring the matter to the attention of the Committee.” In accordance with this decision, the secretariat initiates contact with Parties with respect to any possible non-compliance comprising its compliance with emission reduction and with reporting obligations, and subsequently refers these matters to the Committee, unless they are resolved. The Committee may also draw the attention of the secretariat to possible cases of non-compliance that have not been identified by the secretariat but are evident from the documentation prepared by the secretariat for the Committee’s meetings.

To date, the work of the Committee has focused primarily on referrals from the secretariat and as such, on emission reduction obligations and reporting obligations. Submissions by Parties are rare.

The secretariat sends letters to the Parties soliciting submission of data and then presents the information to the Committee. The Committee meets twice a year. The first meeting serves to gather and review the information concerning implementation; the second meeting serves to consider any additional information and to draft the report to the Executive Body. The Executive Body makes decisions based upon the Committee’s recommendations.

Before it adopts its report or recommendation on a submission or referral, the Committee has to verify that the quality of data reported by a Party has been evaluated by a relevant technical body under the Executive Body and/or an expert body nominated by the Bureau. In addition, the Committee commits to ensure confidentiality of information that has been provided to it in confidence.

The Committee meets in closed sessions only and in principle it follows a paper-based approach in considering a case, based both on reports and on additional information provided by the Party whose compliance is under consideration. The Party whose compliance is under consideration has the right to be represented at the Committee’s meeting, when the case is examined, and may additionally be invited to attend the meeting to address specific questions from the Committee. The Party cannot participate in the elaboration of any recommendation to the Executive Body. In addition, at the invitation of a Party whose compliance is at issue, some (generally three) Committee members may go on mission to gather information within the territory of the Party. To date, two such missions for information-gatherings have been carried out and have proved to be highly beneficial both for the Committee and the Party concerned. The Committee members who gather the information prepare a report for consideration by the whole Committee.

The recommendations of the Committee are set out in its annual reports to the Executive Body. The reports are public documents and are available on the Convention’s website, as are the decisions adopted by the Executive Body.

Civil society stakeholders are not involved in the process.

Upcoming developments and future plans:

Due to a change in the sequence of meetings of the Executive Body and its major subsidiary bodies, the Implementation Committee, on an exceptional basis, will hold only one meeting in 2015. In line with its workplan, the Committee will continue to review the progress made by the Parties in response to decisions taken by the Executive Body based upon the Committee’s recommendations, as well as the need for possible additional measures for dealing with non-compliance on a case-by-case basis. The progress report of the Committee to

the 34th session of the Executive Body (Geneva, 18 December 2015) will be based on the considerations of the Committee at its 35th session (Budapest, 27-29 May 2015), while draft recommendations for possible decisions will be submitted to the 35th Executive Body session to be held in early May 2016. . Further, in accordance with its functions, the Implementation Committee will consider, as necessary, systemic issues relating to compliance that have been identified. On the basis of information provided by the secretariat, the Committee will evaluate the reporting by Parties on their emission and projection data. The Committee will continue its dialogue with appropriate bodies and experts, with a focus on improving communication with the technical bodies under the Convention. Finally, the Committee will continue its practice of inviting Parties to make presentations at its meetings, which has proven to be very beneficial for establishing constructive dialogue with Parties facing implementation challenges in order to better understand the nature of their challenges and measures taken at the national level to address them.

EIA Convention and SEA Protocol

The 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo or EIA Convention) entered into force on 10 September 1997. Parties acknowledged that environmental threats are not confined to national borders and thus undertake to notify and consult each other and the public on planned activities on their territory which may have a significant environmental impact across borders.

There are two amendments to the Convention. The first amendment (2001) provides for accession to the Convention of non-UNECE member States upon approval by the Parties. The second amendment (2004) clarifies the legal basis of the procedures for the review of compliance and for reporting; extends the list of development activities that are subject to the Convention's provisions and improves the alignment with the corresponding legislation in the European Union. The first amendment entered into force on 26 August 2014. six further ratifications are required for the entry into force of the second amendment.

The EIA Convention has been supplemented by the 2003 Protocol on Strategic Environmental Assessment (Kyiv or SEA Protocol), which entered into force on 11 July 2010. The Protocol expands the scope of environmental assessment by calling Parties to integrate it to their plans and programmes, and to the extent appropriate also to policies and legislation, as early as possible in the decision-making. The Protocol also sets out obligations for the consideration of health effects and involvement of health authorities. Both the Convention and the Protocol provide for extensive public participation in the EIA- and SEA-processes (see also MOP decision II/3).

Implementation Committee under the Convention and the Protocol

The Implementation Committee was established by the MOP to the Convention in 2001 to review compliance by the Parties with their obligations under the Convention with a view to assisting them fully to meet their commitments. With the entry into force of the Protocol, the Committee's mandate was extended to review compliance under the Protocol as well (joint decision V/6-I/6).¹

¹ According to article 14, the Meeting of the Parties to the Convention serves as the Meeting of the Parties to the Protocol. Since the entry into force of the Protocol, the Meeting of the Parties to the Convention (MOP) and Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (MOP/MOP) have

The Committee comprises eight members, representing Parties both to the Convention and the Protocol, and elected by the MOPs. In case a member represents a Party to only one of the two instruments, additional members need to be nominated. In its current composition, the Committee has 11 members, with three members nominated for Protocol matters only. In line with decision I/6-V/6, when the Committee considers issues relating to the Convention, it comprises only Parties to the Convention; when it considers issues relating to the Protocol, it comprises only Parties to the Protocol. However, at its twenty-fourth session in March 2012, the Committee agreed that, provided that there were no objections, a member nominated for Protocol matters might provide information, opinions and advice on an issue related to compliance with the Convention but should not take part in decision-making or act as a curator. At the proposal of the Committee, rule 4 of the Committee's operating rules was amended accordingly at the sixth session of the MOP (decision VI/2, annex II) and the MOP/MOP (decision II/2, including by reference annex II to decision VI/2) in June 2014. To ensure continuity of the Committee's discussion, Parties at the last MOP and MOP/MOP also agreed that Parties should appoint alternate members who would participate only as an exception, when the permanent members cannot participate. The responsibility for briefing alternate members rests with the permanent members.

The Committee elects its own Chair and two Vice-Chair. Members serve for two terms (intersessional periods) and may be re-elected once. The Committee adopts its own procedural rules, which are subject to revision based on practice and experience.

The Committee reviews Parties' compliance:

- (a) On the basis of submissions (Party-to-Party- submission or self- referrals); or
- (b) Based on Committee initiatives, which it may decide to undertake:
 - (i) Further to information from other sources (most often NGOs) followed by correspondence with the Party concerned to gather further information;
 - (ii) As a result of specific compliance issues arising from the period reviews of implementation, followed by correspondence with the Party concerned to define whether the Committee should further examine the matter.

The meetings include open and closed sessions. Further to recent revisions of the Committee's structure and functions and operating rules (MOP decision VI/2 and MOP/MOP decision II/2) parts of meetings dealing with *any matter concerning (new text)* specific submissions relating to compliance are not to be open to other Parties or to the public, unless the Committee and the Party whose compliance is in question agree otherwise. It remains to be seen how this rule will be applied in practice.

When the Committee considers a submission, a Committee initiative or information gathering, the Party whose compliance is at issue has the right to participate in, or at least be present during, the consideration of the Committee, but cannot participate or be present in the preparation and adoption of the report, findings and recommendations of the Committee. The draft findings are sent to the parties, which have the possibility to comment within a two-

been held in joint sessions, where items relating to Convention matters only are intercepted by items relating to Protocol matters only or joint Protocol and Convention matters. Consequently, the MOP adopts decisions relating to the Convention only, the MOP/MOP decisions relating to the Protocol only, or the MOP and the MOP/MOP adopt joint decisions relating to the Convention and the Protocol (such as the workplan or the budget). Joint decision bear double symbols (e.g. joint decision V/6-I/6).

month deadline. At its next session, the Committee after taking into account the comments, if any, it finalizes and adopts its findings.

With respect to other observers, such as other Parties, States non-party to the Convention, civil society representatives, and other stakeholders, the Committee meetings are in principle open, unless the Committee decides otherwise. In particular parts of the meetings dealing with specific submissions are not open to observers, unless the Committee and the Party, whose compliance is at issue, decide to hold an open session (Operating Rule 17). Documents on the file of a submission or initiative become publicly available through the Convention's web site at different stages of the procedure, depending on the type of the document, unless there was a confidentiality request (Operating Rule 16):

- a submission and a reply: within one month of receipt
- information by which the Committee becomes aware of a possible non-compliance, any reply to a Committee initiative, corroborating/supporting information, correspondence by the Committee and draft findings and recommendations, and ensuing representations from the Parties involved: once the Committee has concluded consideration of the issue. It should be noted that in the case of self-referrals, such information does not become publicly available, unless agreed by the Committee and the Party concerned.
- other documents: upon request

Pending consideration of the case, the secretariat prepares (i) a short summary of the issue (including the name(s) of the Party/ies involved, date of submission/information/Committee initiative, name and type of activity in case of submission or Committee initiative; and (ii) a list of relevant documentation/information (but not the content). Then, subject to agreement by the Committee, the information is posted on the Convention's website.

The Committee reports on issues of implementation and makes recommendations to the MOP.

Water Convention and Protocol on Water and Health

The 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) entered into force on 6 October 1996. It obliges its Parties to strengthen national measures for the protection and ecologically sound management of transboundary surface waters and groundwaters. Specifically, Parties should prevent, control and reduce transboundary impact, use transboundary waters in a reasonable and equitable way and ensure their sustainable management. In addition, Parties bordering the same transboundary waters should cooperate by entering into specific agreements and establishing joint bodies. The Convention includes provisions on monitoring, research and development, consultations, warning and alarm systems, mutual assistance and exchange of information, as well as access to information by the public.

The 2003 amendment to the Convention allowing for accession by all UN Member States and shifting the Convention from a regional to a global instrument entered into force on 6

February 2013. However, one Party has yet to ratify the amendment and two others have yet to deposit their instruments of ratification; only once all Parties (on the date of amendment) have ratified the amendment can Member States outside UNECE accede.

The Convention has been supplemented by two Protocols, the 1999 Protocol on Water and Health and the 2003 Protocol on Civil Liability for Damage and Compensation for Damage Caused by Transboundary Effects of Industrial Accidents on Transboundary Waters (also to the Convention on Industrial Accidents).

The Protocol on Water and Health entered into force on 4 August 2005. The Protocol aims to protect human health and well-being through better water management for drinking water and adequate sanitation, including the protection of water ecosystems, and through prevention, control and reduction of water-related diseases. Parties to the Protocol commit to set targets in relation to the entire water cycle. UNECE and WHO Regional Office for Europe jointly provide the secretariat.

The Protocol on Civil Liability has only one Party and is not in force.

The Convention and the Protocol on Water and Health have separate implementation/compliance bodies.

Implementation Committee under the Water Convention

The Implementation Committee under the Convention was established by the Meeting of the Parties (MOP) at its sixth session (Rome, 28-30 November 2012) through its decision VI/1 to support implementation and compliance, further to a proposal negotiated by the Legal Board in 2010-2012. The objective of the mechanism is to facilitate, promote and safeguard implementation and application of and compliance with the Convention (see preamble to the annex I to the decision VI/1 “Support to implementation and compliance”). The mechanism is to be simple, non-confrontational, non-adversarial, transparent, supportive and cooperative in nature, building on the distinctive collaborative spirit of the Convention.

The Committee consists of nine members serving in their personal capacity, which does not exclude the possibility that members work for the executive branch of the Government. Three of the members are legal professionals, the others are technical experts. One member is not a national of a Party to the Convention.

Members serve for one term of office (i.e. two intersessional periods) with the possibility of re-election once. The Committee elects its own Chair and Vice-Chair.

Since its establishment, the Committee has been meeting two times a year (5 times in total, so far). However, the frequency and length of meetings might be changed depending on the workload.

Specifically, the Committee has the following main functions:

- (i) Considers requests for advice made by a Party or Parties jointly, relating to specific issues/difficulties in implementing the Convention. Participation in the advisory procedure of Parties that are not requesting Parties or by States non-party to the Convention is subject to their consent, in absence of which, they remained informed about the process;
- (ii) Considers submissions (self- and Party-to-Party submissions);
- (iii) Considers undertaking a Committee initiative (taking after the model of the Implementation Committee under the Espoo Convention and its Protocol on SEA);

- (iv) Examines specific issues of implementation/compliance at the request of the MOP;
- (v) Carries out any other functions assigned to it by the MOP, including examination of general issues of implementation and compliance that may be of interest to all Parties.

The MOP has adopted core rules of procedures in order to make the Implementation Committee immediately operational. The Committee was expected to develop these core rules further and propose the rules of procedure for adoption by the MOP. However, the Committee decided to review the possibility of developing such proposal at a later stage, taking into account the experience in the application of the core rules of procedure.

According to the core rules, the Committee holds its meetings in public for observers, unless it decides otherwise. However, parts of the meeting when the Committee deliberates on findings and measures and adopts its decisions should be closed.

Essential information concerning any request for advice, submission or Committee initiative should be made available on the Convention's website, unless a request for confidentiality had been made. Decisions and recommendations of the Committee and related decisions of the MOP should also be available on the website. Discussion papers prepared by the secretariat or by members of the Committee, however, should not be publicly available, unless the Committee decides otherwise.

The Committee reports to the MOP and makes recommendations for specific measures. However, no measures can be taken by the MOP as a result of the advisory procedure.

Determining whether to begin a Committee initiative:

The Committee agreed that that a Committee initiative should not be invoked by the Committee arbitrarily. The mission of the Committee was to assist Parties in implementing the Convention and facilitate the prevention of water-related disputes and differences. It was important to preserve the credibility and authority of the Committee in fulfilling that mission. The Committee would therefore develop a working document detailing general criteria or factors to guide the determination of when a Committee initiative might be started, but only at a later stage as more experience was needed before embarking on such an activity.

Information gathering:

Having received information from a member of the public, who expressed concerns regarding difficulties in transboundary water cooperation in a river basin shared by the Russian Federation, Kazakhstan, China and Mongolia, the Committee decided to write on three occasions to the Parties concerned, Kazakhstan and the Russian Federation, seeking their views and requesting information. The requests for information became more specific and detailed on each occasion. Given the content of the replies from the Russian Federation and not having received a reply from Kazakhstan, the Committee decided to continue to gather information also from other sources. The Committee was of the opinion that Parties were under a good faith obligation to cooperate with the Committee's information gathering.

Possible reporting mechanism:

The Meeting of the Parties had decided to mandate the Working Group on Integrated Water Resources Management, in consultation with the Implementation Committee, to carry out an analysis of the need for reporting under the Convention. The Committee stressed that a reporting mechanism would be essential for providing the Committee with the information it needs to carry out its functions. It observed that the focus of the reporting should be on the

implementation of Parties' obligations, including challenges encountered and lessons learned. It welcomed in general a proposal for a reporting mechanism prepared by a small group under the Working Group and supported a pilot reporting exercise.

Promotion of the mechanism to support implementation and compliance:

At the Committee's request, the secretariat prepared an introductory power point presentation, which the Committee members agreed to use in their promotion efforts. The Committee agreed that more material on the Committee might be produced at a later stage, such as leaflets, video interviews with the Committee members, contributions to the United Nations Audiovisual Library of International Law, etc. Subsequently the secretariat carried out a series of interviews with Committee members that were recorded on video to promote the Committee in different media; these are available on YouTube. The main aspects of the Committee's work, its mandate and main functional duties, as well as principles of international water law and provisions of the Convention, were covered in the interviews.

The Committee also considered the possibility of organizing a series of seminars on international water law in order to promote the mechanism. A workshop focusing on the contribution of scientific and legal expertise in handling transboundary water issues was held back to back with the fourth meeting of the Committee.

Compliance Committee under the Protocol on Water and Health

The Compliance Committee to the Protocol on Water and Health was established at the first session of the MOP following the entry into force of the Protocol (MOP decision I/2).

The Committee consists of nine members elected by the MOP and serving in their personal capacity. At its present composition, one member belongs to the executive branch of the government and three members are not nationals of any Party to the Protocol. Committee members are elected for a term of office (i.e. two intersessional periods) and may be re-elected once.

The Committee:

- (i) Considers submissions, referrals or communications relating to specific issues of compliance;
- (ii) Prepares, at the request of the MOP, a report on compliance with or implementation of specific provisions of the Protocol; and
- (iii) Monitors, assesses and facilitates the implementation of and compliance with the reporting requirements of the Parties under the Protocol.

The Committee adopts its own procedural rules, on the basis of the general rules of procedure approved by the MOP, which are subject to revision based on practice and experience.

The Committee meets once or twice per year.

All meetings are normally open to the public, with the exception of parts of the meeting when the Committee prepares and adopts findings, decisions on measures or recommendations that are closed and attended only by the Committee. In addition, the Committee meets in closed session when this is necessary to preserve confidentiality of information.

Parties may participate as observers, while non-Parties, intergovernmental and non-governmental organizations enjoying observer status with the MOP, have observer status within the Committee. Observer status may be granted to other stakeholders on a case-by-case basis.

To help the general public in understanding the compliance mechanism and to explain how a communication from the public may be submitted, the Committee elaborated Guidelines on communications from the public.

The first reporting exercise under the Protocol, conducted during autumn 2009/spring 2010, demonstrated that a number of Parties were facing difficulties in implementing the Protocol, in particular with its core obligation to set targets and target dates.

To enhance its facilitation and assistance functions the Compliance Committee at its 6th session in March 2011 adopted Terms of Reference² for a new consultation process geared to help Parties implement their obligations under the Protocol. Under the auspices of the new consultation process, the Committee aims at:

- (i) Assisting Parties in developing an accurate analysis of their situation (enabling them to set targets under the Protocol);
- (ii) Providing recommendations to the Parties on how to improve their situation;
- (iii) Assisting Parties in seeking support from donors, specialized agencies and other competent bodies.

Consultations do not have an inquisitive nature, and are to be initiated by a request from a Party or by a positive response by a Party to an invitation of the Compliance Committee to engage in the Process. Sessions can be held in confidence, if so requested. Civil society also has the possibility to engage in the consultation process.

The second reporting exercise under the Protocol, conducted in 2013, demonstrated an overall improved quality of the reports compared with the first reporting cycle in terms of their content and alignment with the reporting guidelines and template. However, a number of Parties failed to submit their reports and/or failed to establish and publish targets and dates for achieving them in accordance with article 6.

Based on the report submitted by the Compliance Committee to the third session of the MOP (Oslo, 25-27 November 2013), the MOP adopted decision III/1 on general issues of compliance, which inter alia, supported the decision of the Committee that it may, based on its assessment of the results of the second reporting exercise under the Protocol or other information available to the Committee, invite a Party or a small group of Parties having identical or almost identical implementation problems to engage in a consultation within the Consultation Process established by the Committee.

In 2014, the Committee invited four Parties to take part in the Consultation Process. Two Parties accepted the invitation to engage in the Process and one Party agreed to participate as an observer.

The Committee has also discussed different possibilities to address the failure of some Parties to comply with the reporting requirements under the Protocol. It had concluded that, based on paragraph 11 (c) read in conjunction with paragraph 12 of the Compliance Procedure, it did have the competence to not only examine general issues of compliance but also to take appropriate action in case of possible non-compliance by a specific Party with its obligation to report. Accordingly, the Committee had decided to initiate a case regarding possible non-compliance by a Party with its obligation to report, as it had failed to submit its summary

² Available at

http://www.unece.org/fileadmin/DAM/env/documents/2014/WAT/11Nov_25_CC/ToR_Consultation_Process_amended_10th_meeting_Nov14_final.pdf

report within the second reporting exercise. The Committee has also received a communication on the same issue from a non-governmental organization.

To date, the Committee has received no submissions or referrals.

The Committee itself can issue recommendations, without prior agreement of the Party concerned and can issue cautions. The Committee reports to the MOP and makes recommendations for specific measures.

The Committee has also been focusing on strengthening cooperation with the relevant human rights bodies.

Upcoming developments and future plans:

The work of the Compliance Committee in 2014–2016 is expected to focus on the implementation of decision III/1, particularly by providing assistance to a number of Parties through the Consultation Process as well as by focusing on the reporting obligation under the Protocol.

Industrial Accidents Convention

The 1992 Convention on the Transboundary Effects of Industrial Accidents entered into force on 19 April 2000. It aims to protect people and the environment against industrial accidents that can have transboundary effects through prevention and mitigation measures. It also promotes international cooperation, including on research and development and on information and technology sharing, before, during and after an industrial accident, including cooperation on research and development, sharing information and technology.

The Convention has been supplemented by the 2003 Protocol on Civil Liability for Damage and Compensation for Damage Caused by Transboundary Effects of Industrial Accidents on Transboundary Waters (joint instrument to the Water Convention, see above). The Protocol has not entered into force.

Working Group on Implementation

There are two working groups under the Convention: (i) the Working Group on the Development of the Convention (WGD) reviews developments in the legal instruments in other international fora and convenes as needed to consider possible amendments; (ii) the Working Group on Implementation (WGI) is the body established by the Conference of the Parties (COP) to review implementation. It consists of a maximum of ten members representing Parties to the Convention who serve for one term (i.e. one intersessional period) and may be re-elected. The Group elects its own Chair and Vice-Chair for the period.

The main purpose of the WGI is to promote international cooperation, information and technology-sharing. The WGI:

- (i) Monitors implementation and reports to the COP;

- (ii) Reviews the national implementations reports submitted by Parties and non-Parties participating in the Assistance Programme under the Convention (States interested in becoming Parties are also expected to submit a report), and prepares an overall report;
- (iii) Assists the Bureau in facilitating implementation and/or ratification of the Convention by UNECE member States;
- (iv) Monitors the Strategic Approach (i.e. implementation of the Assistance Programme) and the review of self-assessments and action plans;
- (v) Carries out any other task at the request of the COP.

The WGI does not consider compliance by Parties, but only makes general observations on the Parties' responses to the questionnaire on implementation. The periodic review of implementation identifies those Parties that completed the questionnaire and those that did not. It also makes observations about other countries' completed questionnaires, or rather absence thereof, as these countries committed also to report on implementation even though not party. Otherwise the WGI names countries to identify successes or difficulties, but without putting their compliance in question.

Parties have requested that reports are not publicly available. At its last session, the COP decided to look at the present policy with a view to revising it.

The WGI meets in closed sessions and its deliberations are based on the Parties' reports. The rules of procedure apply *mutatis mutandis*. National reports are treated as confidential. There is ongoing discussion on whether the reports should become publicly available.

The COP takes note of the reports by the WGI. In case of implementation challenges, the WGI may "express regret", but it does not take any other measures.

Upcoming developments and future plans:

At its eighth meeting in December 2014, the COP requested the WGD, in cooperation with the WGI, to consider the introduction of a compliance mechanism and to prepare a possible draft decision for review and adoption by the COP in 2016 with due regard to the mandate and functioning of the WGI (ECE/CP.TEIA/30, para. 47).

The COP in 2014 also mandated the WGI to draft a decision on, among others, the availability of national implementation report and the periodicity of reporting.

The two draft decisions mentioned above are part of the COP guidance to be prepared in view of adoption at COP 9 in 2016, following the COP decision to issue guidance and not to proceed with amendments on these issues.

Aarhus Convention and PRTR Protocol

The 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) entered into force on 30

October 2001. Unlike the other UNECE MEAs which focus on the prevention and mitigation of transboundary effects on the environment and create inter-state obligations, the Aarhus Convention focuses on procedural rights (for access to information, public participation and access to justice in environmental matters) of the individuals and groups of individuals, including NGOs, with the ultimate aim of protecting the right to sustainable development and intergenerational equity. As such, the Convention is positioned at the crossroads on environmental concerns and human rights.

The Convention has been supplemented by the 2003 Protocol on Pollutant Release and Transfer Registers (PRTR Protocol), which entered into force on 9 October 2009. The Protocol builds on the obligation of authorities enshrined in the Aarhus Convention to proactively provide environmental information to the public, inter alia through the use of electronic tools. Its objective is “to enhance public access to information through the establishment of coherent, nationwide pollutant release and transfer registers,” i.e. of inventories of pollution from industrial sites and other sources. Although regulating information on pollution, rather than pollution directly, the Protocol is expected to exert a significant downward pressure on levels of pollution, as no company will want to be identified as among the biggest polluters.

The Convention and the Protocol have separate compliance bodies.

Compliance Committee under the Aarhus Convention

Article 15 of the Convention requires the MOP to establish “on a consensus basis, operational arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to the Convention”. The Aarhus Convention Compliance Committee was established in 2003 by the MOP (decision I/7). It consists of nine experts, nationals of Parties or Signatories, who serve in their personal capacity. According to decision I/7, the Committee should be composed of “persons of high moral character and recognized competence in the fields to which the Convention relates, including persons having legal experience”. To date the great majority of the Committee members have been legal professionals, and the present Committee consists of nine lawyers. Members sign a solemn declaration, at the first meeting in which they participate, that they will perform their functions as member of the Compliance Committee impartially and conscientiously.

Members are elected by the MOP to serve for one term of office (two intersessional periods) and may be re-elected once (for a further two intersessional periods). The Committee elects its own Chair and Vice-Chair.

The Committee:

- (i) considers issues of compliance raised in submissions (Party-to-Party and self-submissions), requests from the MOP, referrals from the secretariat and communications from members of the public;
- (ii) prepares reports on compliance/implementation, at the request of the MOP;
- (iii) monitors, assesses and facilitates implementation of/compliance with the Parties’ reporting obligations
- (iv) may examine compliance issues, as appropriate.

The Committee adopts its own procedural rules (*modus operandi*), which is a live document and may be changed according to the developing practice. The Committee has also prepared

a guidance document (which nowadays incorporates the modus operandi) that aims among others to assist members of the public that interested in submitting communications. The Committee is currently revising the guidance document to take into account the developments in the Committee's procedures since the first edition.

The Committee regularly meets four times a year for four days each time (the length of the meetings was extended from 3 to 4 days in 2009 to address increase workload). The meetings are in principle open to the public, with the exception of those parts of the meeting when the Committee is preparing its findings, recommendations and other measures.

To date, the vast majority of compliance issues examined by the Committee have been triggered by communications from members of the public. There have been 130 communications submitted to date, two submissions by a Party concerning another Party's compliance and one request by the MOP for the Committee to review a Party's compliance, while there have been no referrals from the secretariat or submissions by Parties concerning their own compliance.

The quality of communications varies. Some are very well drafted, while others are not well structured and miss important elements. The secretariat usually resolves preliminary issues of structure and primary information, before a communication is considered by the Committee.

For every communication, a curator is assigned. However, all decisions are taken collectively. Until now all decisions have been made by consensus.

Since MOP5 (Maastricht, 30 June – 1 July 2015), the Compliance Committee has established a new procedure for processing new communications. Approximately five weeks before each Committee meeting, the secretariat forwards all communications received since the last meeting that are sufficiently in the form of a communication to the Chair and Vice-Chair of the Committee for their review. Only communications submitted to the secretariat at least five weeks before the next Committee meeting will be considered for preliminary admissibility at that meeting.

The Chair and the Vice-Chair, with the assistance of the secretariat, decide whether the forwarded communications are sufficiently well-prepared to be considered by the Committee at its next meeting for a preliminary determination on admissibility. If not, the secretariat informs the communicant accordingly and invites the communicant to re-submit the communication in the recommended format for communications.

Not later than three weeks before each Compliance Committee meeting, the communications to be considered for preliminary admissibility by the Committee at that meeting are posted, together with any attachments, on the Committee's webpage. Also no later than three weeks before the meeting, the secretariat informs the Party concerned that a communication concerning its compliance will be considered for preliminary admissibility at the next meeting and, though there is no requirement that it do so, a representative of the Party concerned may participate either by audio-conference or in person in that session.

At the same time, the secretariat also informs the communicants that their communications will be considered for preliminary admissibility at the upcoming meeting and that, though there is no requirement that they do so, they may participate by audio-conference or in person in that session.

At the meeting, the Committee discusses the preliminary admissibility of the new communications in open session, with the possibility for Parties, communicants and observers to make short statements. The Committee then deliberates on its findings on preliminary admissibility in closed session. The Committee's findings on preliminary

admissibility are recorded in the meeting report and announced in open session during the reading and adoption of the meeting report.

No later than two weeks after the meeting, the secretariat informs the Party concerned and communicant whether the communication was determined to be preliminarily admissible or found to be inadmissible, or that the Committee decided to defer its determination of preliminary admissibility to its next meeting.

If the communication is found inadmissible, the case is considered to be closed. The Committee's finding that a communication is inadmissible is final and not subject to appeal or review. The communication and all related correspondence remains on the website.

If the communication is found preliminarily admissible, it is forwarded to the Party concerned, which is invited to respond to the allegations, and any other additional questions put by the Committee, within five months. Additional questions may also be sent to the communicant for clarification. After the receipt of the Party's response, a discussion is organized with the communicant and the Party concerned. The discussion is held in open session. Thereafter, the Committee deliberates on the case in closed session, until it finalizes draft findings, which are sent to the Party and the communicant, and also posted on the Convention's website shortly after they are sent. The parties are given four weeks to comment on the draft findings. Comments to the draft findings are also published on the website immediately after receipt by the secretariat. At its subsequent meeting, the Committee after considering the comments received, makes changes as necessary and adopts its findings in closed session. The findings are then sent to the parties and published on the Convention's website.

All documentation relating to a case under consideration is publicly available on the Convention's website, unless the person submitting the information requests confidentiality because there are concerns that he or she may be penalized, persecuted or harassed. In that case, only the information that may potentially identify the person will be withheld.

The Committee's considerations are primarily based on the written and oral submissions by the parties. There is possibility for information gathering through missions in the territory of the Party concerned with the latter's consent or through other experts and advisers, but due to capacity constraints this tool has been rarely used.

In accordance with the annex to decision 1/7, the Committee may recommend to the MOP that it adopt one or more of the measures set out in that annex concerning individual Parties that the Committee has found to be in non-compliance. In addition, in order to address compliance issues without delay pending the next session of the Meeting of the Parties and subject to the agreement of the Party concerned, the Committee may make recommendations directly to that Party.

Since MOP5, the Committee has established a new, more rigorous procedure with respect to the follow-up on MOP decisions on compliance concerning individual Parties. MOP decisions on compliance generally invite each Party concerned to report periodically during the intersessional period on its progress to implement the decision concerning its compliance. Following the receipt of each progress report, the report is forwarded to communicants and registered observers for their comments. At the next meeting, the Committee reviews the progress report together with the comments received from communicants and observers and prepares a progress review. The progress review examines the progress made thus far by the Party concerned, including the extent to which it has implemented each of the recommendations set out in the MOP decision. The Committee's progress review is then sent to the Party concerned and communicants and registered observers. Any comments from the

parties on the progress review will be taken into account by the Committee when reviewing the Party concerned's next progress report.

Upcoming developments and future plans:

At its fifty-first meeting (Geneva, 15-18 December 2015), the Committee will prepare its second progress reviews on the implementation by the Parties concerned of the decisions concerning their compliance adopted by the MOP at its fifth session (Maastricht, 30 June-2 July 2013).

As noted above, the Committee is currently revising the Guide to the Compliance Committee to take into account the developments in its *modus operandi* since the first Guidance Document was published in 2009.

Compliance Committee under the PRTR Protocol

The PRTR Compliance Committee was established in 2010 by the Protocol's MOP (decision I/2). It closely follows the Aarhus Convention Compliance Committee model, but has some distinct features. It consists of nine members of Parties of Signatories who serve in their personal capacity, that are elected by the MOP to serve for one term of office (two intersessional periods) and may be re-elected once. Most current members are legal professionals and belong to the executive of a Party to the Protocol. The Committee elects its own Chair and Vice-Chair. It adopts its procedural rules, which are developed on the basis of practice and experience.

The Committee:

- (i) considers issues of compliance raised in submissions (Party-to-Party and self-submissions), referrals from the secretariat and communications from members of the public;
- (ii) prepares reports on compliance/implementation, at the request of the MOP;
- (iii) monitors, assesses and facilitates implementation of/compliance with the Parties' reporting obligations;
- (iv) take measures and make recommendations directly with the Party concerned (provide assistance, request the preparation of an action plan or a progress report);
- (v) carries out any other function assigned by the MOP;
- (vi) may examine any other compliance issue.

The Committee makes recommendations to the MOP for a number of measures to be adopted concerning individual Parties. The Committee may also make direct recommendations to the Party to facilitate compliance with the Protocol on the basis of identified weaknesses.

Since its establishment, the Committee has met four times. At its first meeting the Committee adopted its "methods of work". In its subsequent meetings, the main focus of the Committee's work lay on lessons learned from the first reporting cycle under the Protocol. In this context, the Committee prepared with the support of the secretariat:

- (a) A synthesis report (ECE/MP.PRTR/2014/5) on the basis of the national implementation reports submitted by the Parties in the 2014 reporting cycle which had been submitted to the second session of the Meeting of the Parties (3-4 July 2015, Maastricht);

- (b) The first and second drafts of two documents entitled ‘Guidance on reporting on the Protocol’s implementation’ and ‘Systemic issues arising under the Protocol on PRTRs and recommendations on how to address them’. These documents continue to be further developed in an on-going consultative process including the repeated input from Parties and stakeholders. The drafts were prepared in view of their consideration by the Protocol’s Bureau and their submission to the fourth meeting of the Working Group of the Parties, scheduled for 26 to 27 November 2015.

The meetings should in principle be open to the public, with the exception of part of the meeting when the Committee is preparing its findings, measures or recommendations.

All documentation relating to a case under consideration should become publicly available on the Protocol’s website, unless information was provided in confidence on a number of grounds listed in MOP decision I/2.

Upcoming developments and future plans:

The work of the Compliance Committee in 2015-2016 is expected to focus on its facilitative role regarding the implementation of the Protocol by Parties, including the further development of the two documents entitled ‘Guidance on reporting on the Protocol’s implementation’ and ‘Systemic issues arising under the Protocol on PRTRs and recommendations on how to address them’.

Chair’s Summary

A Chair’s Summary of the network meeting of 29 June 2015 will be posted on the ECE website after the meeting.

	BODIES	MAIN FUNCTIONS AND TRIGGERS (if relevant) (implementation-related body)	MEMBERSHIP (implementation-related body)
1. AIR			
<p><u>Convention on Long-range Transboundary air pollution</u> (1979, entered into force in 1983)</p> <p><u>(as extended by eight protocols)</u></p>	<p>1) Executive Body (meets once a year)</p> <p>2) Implementation Committee</p> <p>3) Working Group on Effects</p> <p>4) Steering body to EMEP</p> <p>5) Working group on Strategies and Review</p>	<p>- Established in 1997 (dec. 1997/2 as amended, see esp. dec. 2012/25)</p> <p>- The Committee considers compliance on the basis of:</p> <p style="padding-left: 20px;">a) the review of Party's reporting obligations (emission data, strategies and policies) / considers systemic issues that may arise.</p> <p style="padding-left: 20px;">b) any submission by a Party (concerning own or another Party's compliance) or referral by the secretariat of possible non-compliance by an individual Party with any of its obligations under a Protocol, and considers systemic issues that may arise.</p> <p style="padding-left: 20px;">c) a request by the Executive Body for in-depth review of specified obligations in a Protocol</p> <p>- reports annually to the Executive Body which makes decisions upon recommendations by the Committee</p>	<p>9 Parties to the Convention and at least one of the most recent Protocols (1998 Protocol on Heavy Metals, 1998 the Protocol on POPs and the 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone) elected for a period of 2 years (may be re-elected for another term of office)</p> <p>Chair elected annually by the EB</p>
2. EIA/SEA			
<p><u>Convention on Environmental Impact Assessment in a Transboundary Context</u> (Espoo Convention) (1991, entered into force in 1997)</p>	<p>1) Meeting of the Parties to the Convention (MOP) serving also as MOP to the Protocol (ordinary meetings usually once every three years)</p> <p>2) Implementation Committee</p>	<p>- Established in 2001 (MOP decision II/4, as revised through MOP decision III/2)</p> <p>- The Committee considers compliance on the basis of:</p> <p style="padding-left: 20px;">....a) submissions by a Party (concerning own or another Party's compliance)</p> <p style="padding-left: 20px;">....b) Committee initiatives, which it may decide to undertake on the basis of: information from other sources (such as NGOs), or as a result of specific compliance issues arising from the period reviews of implementation</p>	<p>8 Parties for a term of office (two intersessional periods) (may be re-elected for another term of office)</p> <p>Currently 11 Parties (3 members for the Protocol only)</p> <p>When the Committee considers issues relating to the Convention, it comprises only Parties to the Convention; when it considers issues relating to the Protocol, it comprises only Parties to the Protocol. However, provided that there are no objections, a member nominated for Protocol matters only, may provide information, opinions and advice on matters relating to the Convention. The Committee elects its own Chair and Vice-Chair</p>
<p><u>Protocol on Strategic Environmental Assessment</u> (2003, entered into force in 2010)</p>	<p>3) Working Group on EIA and SEA</p> <p>4) Bureau</p> <p>5) Inquiry Commission (not permanent, ONLY to the Convention)</p>	<p>- reports to each MOP which makes decisions upon the Committee's recommendations for measures to be taken</p>	

3. WATER

<p><u>Convention on the Protection and Use of Transboundary Watercourses and International Lakes</u> (1992, entered into force in 1996)</p>	<p>1) Meeting of Parties</p> <p>2) Bureau</p> <p>3) Working group on Integrated Water Resources Management</p> <p>4) Working Group on Monitoring and Assessment</p> <p>5) Implementation Committee</p> <p>6) Legal Board</p> <p>7) Task Force on Water and Climate</p> <p>8) Task Force on the Water-Food-Energy-Ecosystems Nexus</p> <p>9) Joint Ad hoc expert group on Water and Industrial Accidents</p> <p>10) International Water Assessment Center</p>	<p>- Established through MOP-decision VI/1 on support to implementation and compliance</p> <p>The Committee reviews implementation and compliance on the basis of:</p> <ul style="list-style-type: none"> a) Any request for advice concerning difficulties in implementation and application made by a Party, or Parties jointly, vis-à-vis each other, other Parties and/or non-Parties b) Any submission made by a Party (concerning own or another Party's compliance) c) its own initiative where there is an issue of apparent difficulties in the implementation or possible non-compliance d) a request by the MOP to examine specific issues of implementation/compliance or general issues of implementation and compliance <p>The Committee takes measures, including recommendations, to facilitate and support implementation and compliance and to address cases of non-compliance. The MOP may take measures upon report and recommendations by the Committee. The Committee monitors follow-up.</p>	<p>9 members in their personal capacity</p> <p>Committee elects its own Chair and Vice-Chair</p>
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<p><u>Protocol on Water and Health</u> (1999, entered into force in 2005)</p>	<ol style="list-style-type: none"> 1) MOP 2) Bureau 3) Working Group on Water and Health 4) Compliance Committee 5) Task Force on Target Setting and Reporting 6) Task Force on Surveillance 7) Project Facilitation Mechanism 	<p>Established through MOP decision I/2</p> <p>- The Committee reviews compliance on the basis of:</p> <ul style="list-style-type: none"> a) submissions by Parties concerning own or another Party's compliance and communications by members of the public b) referrals by the secretariat <p>The Committee also reviews national implementation reports submitted by Parties to each MOP, and monitors and facilitates compliance</p> <p>The Committee engages in a consultation process to assist in the implementation of the Protocol</p>	<p>9 members in their personal capacity</p> <p>Committee elects its own Chair and Vice-Chair</p>
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4. INDUSTRIAL ACCIDENTS

<p><u>Convention on the Transboundary Effects of Industrial Accidents</u> (1992, entered into force in 2000)</p>	<ol style="list-style-type: none"> 1) Conference of the Parties (meets once every two years) 2) Bureau 3) Working Group on Implementation 4) Working group on development 5) Points of Contact 6) Joint Expert Group on Water and Industrial Accidents 7) Inquiry Commission (ad hoc body) 	<p>Established by COP 1 in 2000 (decision on the implementation of the Convention)</p> <p>The WGI does not review compliance per se, but its role is to:</p> <ul style="list-style-type: none"> a) Monitor the implementation of the Convention and report to the COP b) Review national implementation reports and prepare an overall report on the implementation of the Convention; c) Assist the Bureau in facilitating ECE member States to implement and/or ratify the Convention; d) Monitor the Strategic Approach (implementation of the Convention's Assistance Programme) and the review of self-assessments and action plans; <p>The WGI carries out other tasks assigned by the COP</p>	<p>Maximum of ten members nominated from amongst representatives of the Parties to the Convention</p>
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5. Access to information, public participation, access to justice

<p><u>Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental matters</u> (Aarhus) (1998, entered into force in 2001)</p>	<p>1) Meeting of Parties (MOP) (ordinary meetings once every three years)</p> <p>2) Working Group of the Parties</p> <p>3) Bureau</p> <p><u>4) Compliance Committee</u></p> <p>5) Task Force on Public Participation in Decision Making</p> <p>6) Task Force on Access to Information</p> <p>7) Task Force on Access to Justice</p>	<p>- Established in 2002 through MOP decision I/7 (as amended with regard to membership)</p> <p>- The Committee reviews compliance on the basis of:</p> <p style="padding-left: 20px;">a) submissions by Parties (concerning their own or other Parties' compliance), requests by the MOP and referrals by the secretariat</p> <p style="padding-left: 20px;">b) communications by members of the public</p> <p>The Committee also reviews compliance with the reporting obligations, prepares reports at the request of the MOP and may examine compliance issues, as appropriate. Subject to agreement by the Party concerned, the Committee may make recommendations to the Party.</p> <p>It reports to the MOP and recommends a number of measures to be taken by the MOP</p>	<p>9 members in their personal capacity The Committee elects its Chair and Vice-Chair</p>
<p><u>Protocol on Pollutant Release and Transfer Registers</u> (2003, entered into force in 2009)</p>	<p>1) MOP</p> <p>2) WGP</p> <p>3) Bureau</p> <p><u>4) Compliance Committee</u></p>	<p>- established in 2010 through MOP decision I/2 (closely follows decision I/7 of the MOP to the Convention)</p> <p>- The Committee reviews compliance on the basis of:</p> <p style="padding-left: 20px;">a) submissions by Parties (concerning their own or other Parties' compliance) and referrals by the secretariat</p> <p style="padding-left: 20px;">b) communications by members of the public</p> <p>The Committee takes measures directly with the Party concerned. It also reviews compliance with the reporting obligations, carries out any other function assigned by the MOP, and may examine any other compliance issue</p>	<p>9 members in their personal capacity Elects its Chair and Vice-Chair</p>