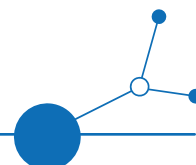
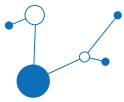


Annex 1 to D.3.4.1 Policy Recommendations Comparative analysis



Version 1
03 2026





Comparative analysis of the current legal framework to monitor compliance with the provisions of the Alpine Convention and the Carpathian Convention

Executive Summary

This comparative analysis examines the different approaches taken by the Alpine Convention and the Carpathian Convention to monitoring compliance with their respective provisions, with the aim of developing improvements to the Carpathian Convention's compliance monitoring system, drawing on the extensive experience gained by the Alpine Convention through its existing compliance mechanism.

After an introductory section to the topic of compliance in Multilateral Environmental Agreements, including an overview of the types and typical elements of existing mechanisms, a detailed presentation of the compliance mechanism of the Alpine Convention and its results to date is provided. The explanation covers the structure and functions of the specific Compliance Committee, the types of procedures and how they are initiated, the bodies involved and the timeline, fact-finding, assessment of the facts and legal evaluation, as well as the possible outcomes of the procedures. Positive aspects worth highlighting include the regular overview of the difficulties in complying with the Alpine Convention's provisions and the corresponding outline of the potential for improvements in the ordinary procedure as well as the useful outcomes resulting from public participation in the form of extraordinary procedures initiated by Observer organisations.

The following section shows that, unlike the Alpine Convention, the Carpathian Convention does indeed contain provisions on the key elements of compliance monitoring in the Framework Convention and its Protocols but lacks a detailed mechanism for reviewing compliance with its provisions. This results in reporting not focusing sufficiently on the legal content of the obligations, lack of substantive debate to what extent existing obligations arising from the Carpathian Convention have been fulfilled by the measures taken by the Contracting Parties and in generic recommendations of the Carpathian Convention Implementation Committee and generic decisions of the Conference of the Parties as follow up to monitoring compliance.

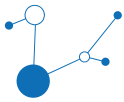
In light of the positive experience gained by the Alpine Convention with its compliance mechanism, it is therefore proposed that a specific compliance mechanism be established for the Carpathian Convention. The recommendations set out in the analysis regarding the design of this mechanism include proposals and options for key features, such as the objectives of the compliance mechanism, the review body, reporting, the initiation and the consequences of the review. In particular, it is suggested that Observers be given the opportunity to have cases of suspected non-compliance with the Convention reviewed by the review body.

Finally, the study explains how these proposals can be implemented in procedural terms and what benefits they can bring to the Contracting Parties of the Carpathian Convention.



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1. Introduction

This study investigates the approaches taken by the Alpine Convention and the Carpathian Convention to monitor compliance with their respective provisions. Given that the Carpathian Convention, as an international agreement on the sustainable development of a mountain region which has a structure and focus similar to that of the Alpine Convention, and that the Alpine Convention has already gained 23 years of experience with its specific compliance mechanism, the objective of this analysis is to identify lessons learnt that could be used by the Carpathian Convention for improving the monitoring of compliance with its provisions.

This analysis forms part of the activities of the Central Mountains Project, which is carried out with a duration from April 2023 to March 2026 within the framework of the Interreg Central Europe Programme. The Central Mountains Project¹ deals with strengthening governance models for sustainable development of mountain areas in Central Europe and improving cooperation among Alpine-Carpathian regions.

The analysis is structured as follows. First some general considerations about compliance in international law and in Multilateral Environmental Agreements (MEAs) in particular are presented. Working definitions of the key terms are provided and typical elements of existing mechanisms aiming to monitor compliance are addressed: actors involved, initiation, rules and scope of the procedure(s), fact finding, assessment of the facts, legal assessment and possible outcomes of the procedure(s).

This is followed by a detailed description of the Alpine Convention's compliance mechanism along these typical elements. In addition, concrete results of the procedures carried out so far and critical aspects are brought up.

Subsequently, the Carpathian Convention's approaches to verifying compliance with its provisions are presented, also based on the typical elements of existing mechanisms. These explanations of the current situation will reveal where there is potential for improvement.

Finally, in a last section, recommendations for improving the monitoring of compliance with the provisions of the Carpathian Convention and thus for improving their implementation are proposed.

In terms of methodology the workshop "From Pilot to Policy: Ensuring Sustainability through Governance structures in Central Europe - In Dialogue with the Carpathian and Alpine Conventions" held on 16 December 2025 in Vienna served as an initial discussion of the current mechanisms to monitor compliance with the provisions of the Alpine Convention and the Carpathian Convention, which were presented to the partnership of the Central Mountains Project. Questions on possible changes of the Carpathian Convention's approach to monitor compliance were then developed and circulated to interested stakeholders by the Carpathian Convention Secretariat and the author for the purpose of gathering feedback. During the same period a first draft study was prepared based on desk research. This draft study including the proposed recommendations was then cross-checked and refined in light of the feedback received and a subsequent dialogue with relevant experts from the Carpathian Convention, including the Carpathian Convention Secretariat.

¹ Information about the project partnership, events held to date and the project outputs can be downloaded at <https://www.interreg-central.eu/projects/central-mountains/>.



2. Compliance in Multilateral Environmental Agreements

2.1. Definitions of the relevant key terms

“**Compliance**” is the actual performance of a behaviour required by a norm, in our case the fulfilment by the Contracting Parties of their obligations under MEAs, and any amendments to these agreements². Compliance is not an „all or nothing“ game. The fact that a Party is not fully compliant does not mean that it is fully non-compliant. Despite the binary nature of the language used, compliance occurs across a scale of shades of grey³.

A distinction needs to be drawn between compliance and implementation. “**Implementation**” refers to, inter alia, all relevant laws, regulations, policies, and other measures and initiatives, that Contracting Parties adopt and/or take to meet their obligations under a MEA and its amendments, if any⁴. A State is said to implement an international norm at the domestic level when it takes appropriate domestic measures for the purpose of meeting its obligations under the international treaty norm. Such measures might include enacting legislation, court rulings and administrative decisions, putting policies into practice or allocating resources. The mere fact that an implementation measure is taken does not mean that it is adequate to meet a treaty obligation nor that the State is necessarily compliant with its obligation⁵. Compliance includes implementation, but is broader, as it is concerned with factually matching State behaviour to international norms.

“**Effectiveness**” is related to, but is not identical with, compliance. Countries may be in compliance with a treaty, but the treaty may nevertheless be ineffective in attaining its objectives and even treaties that are effective in attaining their stated objectives may not be effective in addressing the problems they were intended to address. To illustrate the point, compliance with a treaty may result in the cessation of an activity that contributed to pollution, but it may also lead to an overall increase of pollution by encouraging other activities as substitutes whose consequences are even worse⁶.

At this point, it should be noted that according to the fundamental principle of ‘pacta sunt servanda’ (agreements must be kept) enshrined in Article 26 of the Vienna Convention on the Law of Treaties every treaty in force is binding upon the Parties to it and must be performed by them in good faith. This requires the Parties of an International treaty to fulfil obligations honestly, reasonably, and in a manner that does not frustrate the treaty's object and purpose. Good faith goes beyond mere literal compliance; it requires taking necessary steps to ensure the treaty is effective⁷. Furthermore, according to Article 27 of the Vienna Convention on the Law of Treaties, invoking domestic law to justify non-compliance is not permitted. Nevertheless, there remains a grey area between effectiveness and compliance.

² This definition of compliance is taken from recital 9 (a) of the UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (Nairobi 2002) and is consistent with the standard usage. It should be noted that the UNEP Guidelines Part II define compliance from a domestic perspective as “the state of conformity with obligations, imposed by a State, its competent authorities and agencies on the regulated community, whether directly or through conditions and requirements in permits, licences and authorizations, in implementing multilateral environmental agreements”, see recital 38 (a) available at <https://wedocs.unep.org/rest/api/core/bitstreams/244ca021-97fa-4a56-9a52-ff8f0fc117c8/content>.

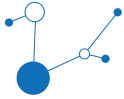
³ See Harold K. Jacobsen and Edith Brown Weiss, ‘A Framework for Analysis’ in Engaging Countries- Strengthening Compliance with International Environmental Accords (MIT Press 1998) p. 4.

⁴ This definition of implementation can be found in recital 9 (b) of the UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (Nairobi 2002).

⁵ See Comparative Analysis of Compliance Mechanisms under selected MEAs (UNEP, Nairobi 2007), p. 21.

⁶ See Harold K. Jacobsen and Edith Brown Weiss, ‘A Framework for Analysis’ in Engaging Countries- Strengthening Compliance with International Environmental Accords (MIT Press 1998) p. 5.

⁷ See Markus Kotzur, ‘Good Faith (Bona fide)’, Max Planck Encyclopedia of Public International Law (2009), recitals 19 and 20.



„Monitoring“ involves the collection of data and can be used to assess compliance with an agreement, identify compliance problems and indicate solutions in accordance with the provisions of a MEA⁸. The term can refer to scientific and technical monitoring of environmental conditions or to performance monitoring of implementation of MEA obligations. Scientific and technical monitoring is undertaken by bodies that are often independent of but work in cooperation with the MEA Parties and Secretariat. However, the type of monitoring this analysis focuses on is national performance in implementing MEA obligations. Performance monitoring may address a Party's establishment of systems to implement the MEA but does not involve review of accuracy of particular data⁹.

2.2. Fundamentals of compliance in international law

In international law, the subjects (primarily States) are equal; there is no superior authority that can verify compliance without the consent of the subject concerned. International law is a decentralized legal order and, thus, does not dispose of those enforcement mechanisms which are typical for national law enforcement, where law is enforced through a system of courts and police¹⁰. In essence, the subjects of international law are responsible themselves for ensuring compliance with their obligations.

At this point, however, it should be noted that the situation is different regarding the so-called mixed agreements of the European Union, international treaties concluded between the EU along with its Member States and one or more third countries or international organizations¹¹. They occur when an agreement covers areas of both EU exclusive competence (e.g. common commercial policy) and shared (e.g. transport, environment) or national competences (e.g. culture). Such mixed agreements¹² have become part of EU law and can therefore be the subject of complaints and EU infringement procedures. In this case, the supranational character of the EU would have an impact, as compliance with EU law could be enforced through judgements and imposition of fines by the Court of Justice of the EU¹³.

Norms may have reciprocal or objective character. 'Classical' international norms largely have reciprocal character. That is to say that the obligation of one State is mirrored by a parallel obligation of another State. States are required to exchange similar treatments, benefits, or penalties. Examples include diplomatic reciprocity which leads to treating foreign diplomats on par with one's own citizens and trade liberalization, where nations grant equivalent tariff reductions or market access to one another. In these cases, one state's compliance is juridically dependent on another's actions, acting as a functional "tit-for-tat" mechanism. Reciprocal norms motivate legally compliant behaviour, because if a norm is violated by an actor, that actor runs the risk of being violated himself.

The story is different when it comes to non-reciprocal or objective norms. The Parties to the Montreal Protocol for example have the obligation to refrain from the use of specific substances to deplete the ozone layer. If one were to apply the reasoning of reciprocity State B could assert to be justified to emit such substances in response for State A doing the same.

⁸ See recital 14 (c) (ii) of the UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (Nairobi 2002).

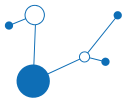
⁹ See Comparative Analysis of Compliance Mechanisms under selected MEAs (UNEP, Nairobi 2007), p. 21.

¹⁰ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 1.

¹¹ See Art 216 TFEU.

¹² The Alpine Convention Protocols on Mountain Farming, Soil Protection, Tourism and Energy are such mixed agreements of the EU. However, apart from a single procedure concerning compliance with the Convention for the Protection of the Mediterranean Sea against Pollution (see judgement of 7 October 2004 - Case C-239/03), the European Commission has not initiated any further procedures on mixed agreements to date.

¹³ See Wolfger Mayrhofer, 'Die Alpenkonvention - Einhaltung und Durchsetzung' in Die Alpenkonvention, CIPRA Austria ed. Nr 67/2012 p. 10.



In the field of International Environmental Law, norms are frequently non-reciprocal or objective in nature as the commitments relate to the protection of collective or community interests. In these cases, the principle of “tit-for-tat” does not encourage compliance with the law but may even be detrimental to it. It follows that objective norms are not in themselves conducive to compliance.

Not surprisingly it was particularly for non-reciprocal norms that specific procedural instruments needed to be developed to promote further compliance. Such mechanisms comprise a whole variety including formalized non-compliance mechanisms elaborated under MEAs but also mechanisms allowing for claims by individuals for instance in the area of international protection of human rights¹⁴.

2.3. Types of compliance mechanisms

In the field of environmental protection three lines of development concerning ways to ensure compliance must be distinguished: the classical law of State responsibility, enforcement of environmental law by private actors and compliance regimes established under MEAs¹⁵. While the significance of State responsibility is limited, apart from individual cases brought before the International Court of Justice¹⁶, enforcement of environmental law by private actors is an important option. That approach has two aspects: private tort law providing for the liability of persons or entities adversely affecting the environment¹⁷ and the possibility for private actors to challenge decisions by public authorities having an impact on the environment¹⁸. For both aspects, transboundary access to courts is essential.

Let us now take a closer look at the third line, the compliance regimes developed under MEAs. These specific compliance mechanisms may be cooperative or confrontational¹⁹ Litigation, e.g within a dispute settlement procedure, is confrontational. It would require that one Contracting Party takes legal action against alleged breaches of an MEA by another Contracting Party. The outcome of the litigation is binding. The usual compliance mechanisms instituted by MEAs, on the other hand, are cooperative; their findings are of a recommendatory nature. These compliance mechanisms do not involve court proceedings and are based on the principle of “name, blame and shame”. They do not lead to convictions or punishments but are intended to have an effect of loss of reputation creating pressure to behave in accordance with the law. The idea behind this principle is that States, more precisely the people acting as organs or agents of States, have a strong aversion against being characterized as lawbreakers²⁰.

Compliance monitoring frameworks can have **four categories of components**: requirements for information reviewing national performance of MEA obligations (‘performance review information’); institutionalized multilateral procedures to consider apparent instances of non-compliance (‘multilateral non-compliance procedures’); multilateral measures adopted to respond to non-compliance (‘non-compliance response measures’) and dispute settlement procedures²¹.

¹⁴ The explanations on the character of norms in international environmental law are taken from Markus Reiterer, ‘Some Thoughts on Compliance with International Obligations’ in *International Law between Universalism and Fragmentation*, Festschrift in Honour of Gerhard Hafner, Vienna 2008 p. 946.

¹⁵ See Michael Bothe, ‘Compliance’, *Oxford Public International Law* (2010), recital 44.

¹⁶ E.g., the *Gabčíkovo-Nagymaros Case* (Hungary v Slovakia) regarding waterworks on the Danube.

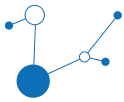
¹⁷ E.g., the Protocol on Liability and Compensation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

¹⁸ E.g., the possibility for a broad spectrum of actors to challenge governmental decisions affecting the environment according to art. 9 of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, which is widely used.

¹⁹ See Michael Bothe, ‘Compliance’, *Oxford Public International Law* (2010), recital 118.

²⁰ See Michael Bothe, ‘Compliance’, *Oxford Public International Law* (2010), recital 107.

²¹ See *Comparative Analysis of Compliance Mechanisms under selected MEAs* (UNEP, Nairobi 2007), p. 29.



2.3.1. Performance review information

Performance review information is gathered primarily through national self-reporting but a few MEAs such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) also provide for supplementary third-party verification or monitoring²². The public can also be involved in the drafting of national reports for MEAs such as the Convention on Biological Diversity (CBD) or the Convention on the protection of the Black Sea (Bucharest Convention)²³. Performance review information does not in itself assess national responses to international obligations.

Many MEAs require their Parties to exchange information as part of their primary operational obligations. For example, they might be required to provide information on ambient environmental conditions or on environmental technologies. This operational information is to be distinguished from MEA requirements for performance review information. In relation to their performance, Parties are often required to report on the measures they have taken to implement a particular MEA, usually by submitting annual reports on their relevant laws or policies based on guidelines or templates provided. Often, operational and performance information are inter-related, as data from operational information exchanges are fed into performance review²⁴.

Compliance with international obligations is in many ways secured through national implementation measures. International law is in most cases applied by national actors who are subject to orders emanating from national law²⁵. The widely used reporting systems relate to these national measures of implementation²⁶.

An important aspect of this multilevel phenomenon is the application of international law by national courts. It depends on the status of international law in a given national legal order, including the question whether an international norm can be regarded as self-executing or directly applicable in domestic law. This is the case when its provisions can be applied by courts or executive agencies as provisions of domestic law without the need for further legislative or administrative measures²⁷.

2.3.2. Multilateral non-compliance procedures

Most MEAs have established or are in the process of developing a formal **multilateral non-compliance procedure**. When developed, this usually comes in the form of a Committee, called an Implementation Committee or Compliance Committee. The structure of the compliance bodies is basically similar, but it varies in a few important details. The Committee may consist of a limited number of representatives of Member States or of people elected in their individual capacity. As a rule, it is at least de facto independent²⁸. A Party's alleged non-compliance may be referred to the Committee for consideration (or it may, itself, refer its own inability to comply) and the Committee then makes a recommendation on the matter to the Conference of the Parties (COP). Substantial failures to submit national performance information can conceal national non-performance of primary operational obligations and,

²² See Comparative Analysis of Compliance Mechanisms under selected MEAs (UNEP, Nairobi 2007), table p. 108.

²³ See the example of the Ukrainian NGO EcoPravo-Kyiv in the Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (UNEP Nairobi 2006, p. 134).

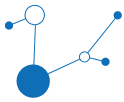
²⁴ See Comparative Analysis of Compliance Mechanisms under selected MEAs (UNEP, Nairobi 2007), p. 29.

²⁵ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 30.

²⁶ The UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (Nairobi 2002) list a series of national measures that can be taken to implement MEAs in recitals 19 to 32. These measures range from regular reviews of the relevant regulatory framework to coordination among departments and agencies at different levels of government and the consultation of major stakeholders when developing national implementation plans.

²⁷ See Karen Kaiser, 'Treaties - Direct Applicability', Oxford Public International Law (2013), recital 1. There are numerous provisions in the Alpine Convention's Protocols that are sufficiently specific to be directly applied by national authorities. See also Werner Schroeder, 'Die Alpenkonvention - Inhalt und Konsequenzen für das nationale Umweltrecht' in *Natur und Recht*, Nr. 3/2006, p. 137.

²⁸ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 50.



therefore, is often treated as a failure to meet a primary operational obligation. Usually, the final output is a decision by the COP. The purpose of such procedures is to identify compliance difficulties and to facilitate better compliance in a non-adversarial manner. Normally, reference can be made to the Committee once non-compliance is already an issue, or to prevent such non-compliance arising. In that respect, multilateral non-compliance procedures may be distinguished from traditional dispute resolution procedures, which are usually invoked only once sufficient damage has been done to the legal order for a conflict to arise²⁹.

2.3.3. Non-compliance response measures

A **non-compliance response measure** is necessary at the multilateral level when an instance of substantial non-compliance is identified under a non-compliance procedure. The response needs to be tailored to the particular circumstances of the case. Non-compliance usually stems from lack of human, material and financial resources and/or lack of political will. The response measures available can be classified into two categories: incentives - technical and financial assistance to support improved implementation; and disincentives - penalties such as stricter requirements for performance review information. Incentives are the usual response and include enhanced international cooperation with the non-compliant Party in support of implementation. The rationale of this approach is that it is more important to make the system work than to 'punish' a defaulting State³⁰. The assistance may be subject to conditions such as the adoption of a national program of implementation actions. This priority or conditional assistance is referred to as 'non-compliance response assistance' and must be distinguished from regular cooperative assistance under the MEA. Technical assistance includes capacity-building mechanisms in the form of training and workshops, which address issues relating to lack of human resources and know-how; technology transfer and exchange of information mechanisms to address issues relating to the lack of materials; and financial provisions to address resource issues. Financial assistance often comes in the form of a Trust Fund or a financial mechanism from which the Parties provide funding for relevant projects³¹.

2.3.4. Dispute settlement procedures

MEA **dispute settlement procedures** are grouped in three clusters of procedures: negotiation, conciliation (generally non-binding and facilitative, involves a third party) and arbitration (generally binding but with fewer rules than a judicial settlement). MEA dispute settlement procedures often comprise bilateral negotiation, compulsory conciliation and voluntary arbitration³². The arbitration procedure is usually invoked if the dispute has not been resolved through negotiation. Conciliation is an option where negotiations fail but is invoked only if one Party requests it and the other accepts the invitation. Otherwise, Parties have often the right to invoke to compulsory arbitration procedures and the forum in which the proceedings are to take place³³. The dispute settlement procedure outcomes are generally binding when they are part of formal, determinative processes like arbitration or court litigation, resulting in legally enforceable decisions.

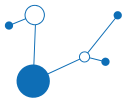
²⁹ See Comparative Analysis of Compliance Mechanisms under selected MEAs (UNEP, Nairobi 2007), p. 31.

³⁰ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 112.

³¹ See Comparative Analysis of Compliance Mechanisms under selected MEAs (UNEP, Nairobi 2007), p. 32.

³² See Comparative Analysis of Compliance Mechanisms under selected MEAs (UNEP, Nairobi 2007), p. 12.

³³ See Comparative Analysis of Compliance Mechanisms under selected MEAs (UNEP, Nairobi 2007), p. 33.



2.4. Typical elements of compliance mechanisms

Any procedure aiming to ensure compliance has several typical elements. There are actors or events which trigger such a procedure (initiation), rules to determine its scope (mandate), bodies involved in the procedure, fact-finding, assessment of the facts, legal evaluation, and reactions or consequences³⁴. Procedures to induce compliance may be initiated by a State Party, including the State whose compliance is doubtful, by treaty bodies including under certain well-defined conditions also the Secretariat of the treaty in question, and in some cases the procedure is also open to concerned individuals or organizations³⁵. A phenomenon which has developed in recent years is the role of civil society and of affected individuals in compliance procedures. This can be called bottom-up compliance procedures³⁶.

Fact-finding necessarily constitutes an essential part of procedures to induce compliance. Measures to induce compliance presuppose a clarification of the actual conduct or situation which may constitute compliance or non-compliance. Formalized compliance procedures under international regulatory regimes most often rely on a reporting system. The basic information as to whether there is compliance or not is furnished by the States themselves. The ensuing questions are whether and how the correctness and completeness of these reports are checked, and whether and by whom these reports are assessed with a view to drawing practical conclusions, in particular as to whether further measures are required³⁷. Modern environmental agreements provide for expert review processes. It is also essential that information sources in addition to the State reports can be used but this is a somewhat controversial issue. It is in this context that information provided by organizations of civil society is important³⁸.

Any fact-finding procedure will result in a final assessment of what the facts really are. Then, the facts must be evaluated as to their legal consequences. For both assessments, the question arises as to who performs this assessment and how³⁹. The result of the assessment of the facts may be stated in different forms. Unless there is a court judgment, the usual document is a report by the evaluating body, which may or may not be rendered public. That question is crucial for the type of reaction which may follow the assessment. Loss of reputation because of non-compliance requires a public statement of the assessment. On the other hand, reactions by persuasion or even assistance (positive inducement) may often function without that publicity⁴⁰. In the case of environmental agreements, the legal consequences are usually determined by specific bodies which decide on the evaluation and recommend the measures to be taken⁴¹.

Concerning the result of these assessments it may be stated that there is compliance, that there is uncertainty about compliance, or that there is non-compliance. In the first case, if that result is published or communicated to relevant actors, fact-finding serves as a confidence-building measure. This is indeed a very important function of fact-finding. In other cases, the question of reaction arises⁴². If it is stated that there is no compliance, this may lead to positive (e.g. assistance under multilateral regulatory regimes) or negative (e.g. loss of certain rights) inducements being adopted. What remains difficult is the case of uncertainty. In the case of court procedures, there are rules on the burden of proof. They do not exist in the case of many other procedures. Then, the question of how to deal with that uncertainty may become political⁴³. This may be a plan of action which the State concerned

³⁴ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 116.

³⁵ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 121.

³⁶ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 125.

³⁷ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 48.

³⁸ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 132.

³⁹ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 134.

⁴⁰ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 135.

⁴¹ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 137.

⁴² See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 138.

⁴³ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 139.



binds itself to pursue, it may be measures of assistance which help the State to comply, but it may on the other hand be some kind of negative sanction (e.g. suspension of procedural rights if existing under the treaty as e.g. in the Kyoto Protocol)⁴⁴.

3. The Alpine Convention's Compliance Monitoring Framework

The Alpine Convention and its Protocols are independent treaties under international law with legal effects between the Contracting Parties but also within the Contracting Parties, the eight Alpine States Austria, France, Germany, Italy, Monaco, Liechtenstein, Slovenia and Switzerland as well as the EU⁴⁵. In addition to the Protocols on Spatial Planning and Sustainable Development, Mountain Farming, Nature Protection and Landscape Conservation, Mountain Forests, Tourism, Energy, Soil Conservation as well as Transport, the Alpine Convention is equipped with its own binding Protocol on Dispute Settlement. Moreover, there is a separate mechanism for monitoring compliance with the Alpine Convention and its thematic Protocols. Compliance with the provisions is thus ensured by a dual set of instruments.

3.1. The Alpine Convention's compliance mechanism

3.1.1. Establishment of the Compliance Committee

In addition to setting forth detailed provisions for a compliance mechanism within the terms of an MEA, Parties to an MEA also can develop a compliance mechanism after the MEA enters into force. There are two general ways that this can happen. First, an MEA can empower the COP to create a compliance mechanism, either through a general mandate or through specific parameters for the mechanism. Second, if the MEA is silent as to means for ensuring compliance, the COP can take subsequent action to develop a compliance mechanism⁴⁶.

The Alpine Convention has taken a middle course, as it is based on the reporting procedure under Article 5(4) of the Alpine Convention, which requires the Contracting Parties to submit information on the implementation of the Convention and the Protocols to the COP (Alpine Conference), and Article 6(e) of the Alpine Convention, which authorises the COP to set up Working Groups necessary for the implementation of the Convention. The COP has made use of this authorisation by establishing a Compliance Committee and defining its mandate and working methods with decision VII/4 of the COP 2002 in Merano/Meran (IT). Updates of this compliance mechanism (hereinafter referred to as Alpine Convention compliance mechanism) were made at the COPs 2012 in Poschiavo (CH), 2016 in Grassau (DE) and 2022 in Brig (CH). The changes concerned minor details, such as simplifications to the translation regime⁴⁷.

The Alpine Convention compliance mechanism covers the Framework Convention and all thematic Protocols. The Compliance mechanism is an independent procedure from the dispute settlement procedure set out in the respective Protocol of the Alpine Convention and shall not prejudice it in any way⁴⁸.

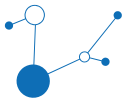
⁴⁴ See Michael Bothe, 'Compliance', Oxford Public International Law (2010), recital 50.

⁴⁵ See Bernd Söhnlein, '20 Jahre Alpenkonvention - Bilanz und Perspektiven aus juristischer Sicht', Bayerische Verwaltungsblätter, Nr. 4/2013, p. 106.

⁴⁶ See Manual on Compliance with end enforcement of Multilateral Environmental Agreements (UNEP, Nairobi 2006), p. 163.

⁴⁷ The current mechanism can be downloaded from <https://www.alpconv.org/en/home/organisation/compliance-committee/#c916>.

⁴⁸ See point II.4.4. of the Alpine Convention compliance mechanism.



3.1.2. Composition of the Compliance Committee

The Compliance Committee is composed of a maximum of two representatives of every Contracting Party and of a maximum of two representatives of the Observers present in the Permanent Committee⁴⁹. If necessary, experts can be invited, who contribute to the discussions on a case-by-case basis with their specialist knowledge. The Permanent Secretariat shall assist the Compliance Committee, which may issue instructions to it in this regard⁵⁰.

The representatives of the Contracting Parties are representatives of the administrations responsible for implementing the Convention and not national delegates acting in total independence from these administrations as in the corresponding Committee of the Aarhus Convention⁵¹. They may also be national focal points or heads of delegations, but this rarely happens. The members of the Compliance Committee often have legal expertise.

As a rule, the current Presidency holds the chair of the Compliance Committee.

3.1.3. Procedures of the Alpine Convention's compliance mechanism

The mechanism provides for two procedures, an ordinary procedure for regularly reviewing compliance with the Convention and Protocols based on reports from the Contracting Parties, and an ad hoc procedure for specific cases of suspected non-compliance called extraordinary procedure. The two procedures of the mechanism are of a consultative, non-confrontational, non-judiciary and non-discriminating nature⁵². These principles ensure that Contracting Parties work collaboratively to resolve issues.

The following general procedural principles apply to both procedures.

The Rules of Procedure of the Permanent Committee shall apply to the Compliance Committee which may adopt further supplementary or deviating provisions if necessary⁵³.

Each Contracting Party has the right to participate in the entire procedure, to consult all relevant documents in full and to comment on the work of the Compliance Committee⁵⁴.

The four official languages of the Alpine Convention: French, German, Italian and Slovenian are official languages for negotiation, interventions will be interpreted into all official languages⁵⁵.

⁴⁹ Of the fifteen Observer organisations currently recognised by the Alpine Convention (see the complete list at <https://www.alpconv.org/en/home/organisation/observers/>), CIPRA International Commission for the Protection of the Alps (CIPRA), the umbrella organisation of the mountaineering associations of the Alps Club Arc Alpin (CAA) and WWF regularly attend the meetings of the Committee, while a few others, such as the Association of the cableway operating industry (FIANET), attended sporadically.

⁵⁰ See points II.1.1. and II.1.2. of the Alpine Convention compliance mechanism.

⁵¹ See point I. 1 and 2 of the Annex of decision I/7 on the review of compliance of the Aarhus Convention which stipulates that the Committee shall be composed of nationals of the Parties and Signatories to the Convention who shall be persons of high moral character and recognized competence in the fields to which the Convention relates, including persons having legal experience, and that the members of the Committee shall serve in their personal capacity.

⁵² See indent 8 of the preamble to the Alpine Conferences decision on the compliance mechanism.

⁵³ See point II.1.3. of the Alpine Convention compliance mechanism. The Rules of Procedure of the Permanent Committee can be found at https://www.alpconv.org/fileadmin/user_upload/downloads/downloads_en/2_organisation_en/organisation_permanentcommittees_en/Rules_of_procedure.pdf.

⁵⁴ See point II.3.1.3. of the Alpine Convention compliance mechanism.

⁵⁵ See Art 19(2) of the rules of procedure of the Permanent Committee.



Official documents of the Compliance Committee and their annexes shall be drawn up in English. Final reports of the Committee shall be translated into German, French, Italian and Slovenian before being forwarded to the Permanent Committee⁵⁶.

The Compliance Committee's decision proposals and minutes of meetings are drawn up in German, French, Italian and Slovenian⁵⁷.

The Chair shall circulate the draft agenda for each meeting, together with the meeting documents where possible, to the Contracting Parties and Observers at least six weeks before the meeting. The Chair shall include in the draft agenda any additional items proposed by a Contracting Party after the draft agenda has been circulated, before the start of the meeting⁵⁸.

The Chairperson shall participate in the meetings of the Compliance Committee solely in that capacity and shall not, during that period, exercise the rights of a delegate of a Contracting Party, which may be exercised by another delegate of the Party concerned⁵⁹.

The Compliance Committee adopts its reports by consensus; should all efforts to reach a consensus have been exhausted, and if the Chairperson explicitly declares so, the reports may be adopted by a three-quarter majority of the Contracting Parties entitled to vote and attending the meeting⁶⁰. When dealing with matters relating to the Protocols, only the Contracting Parties to the relevant Protocol shall be entitled to vote⁶¹.

Information designated as confidential by any party to the proceedings shall be treated as confidential⁶². The deliberations throughout both procedures of the mechanism shall be confidential. An Observer may be excluded from the deliberations, in particular in the event of a breach of confidentiality and when dealing with information designated as confidential⁶³.

With the consent of the Contracting Party concerned, the Compliance Committee may conduct inquiries on its territory. These on-site inquiries shall be conducted in accordance with the procedure established by the Compliance Committee⁶⁴. No such on-site inquiry has been conducted to date.

In addition to the two procedures, which are described in more detail below, the Compliance Committee also has the function of supporting the Contracting Parties, upon their request, in complying with the Convention and its Protocols⁶⁵. There are no specific rules governing this function and no such request has been made to date.

⁵⁶ See point II.3.2.6. of the Alpine Convention compliance mechanism and section 3.1.3.1.

⁵⁷ See Art 19(4) of the rules of procedure of the Permanent Committee.

⁵⁸ See Articles 8 and 9 of the rules of procedure of the Permanent Committee.

⁵⁹ See Art 13(1) of the rules of procedure of the Permanent Committee.

⁶⁰ See point II.3.1.9. of the Alpine Convention compliance mechanism. According to Art 17 of the rules of procedure of the Permanent Committee the presence of two thirds of the Contracting Parties is required.

⁶¹ See point II.3.1.4. of the Alpine Convention compliance mechanism.

⁶² See point II.3.1.6. of the Alpine Convention compliance mechanism.

⁶³ See point II.3.1.7. of the Alpine Convention compliance mechanism.

⁶⁴ See the procedure for on-site inquiries at <https://www.alpconv.org/en/home/organisation/compliance-committee/#c916>.

⁶⁵ See point II.2.2. of the Alpine Convention compliance mechanism.



3.1.3.1. Ordinary compliance procedure

The ordinary compliance procedure consists of preparing a report on the status of compliance with the Alpine Convention and its Protocols based on the national reports submitted every ten years (phase 1) and an in-depth review of those areas where implementation deficiencies were identified in phase 1 (phase 2)⁶⁶.

3.1.3.1.1 Initiation and scope of the procedure

The procedure is initiated not by any actor, but by the expiry of deadlines. The last deadline for submitting the country reports was 1 September 2019. The next ordinary compliance procedure is expected to start in September 2029⁶⁷.

The scope of the ordinary procedure is determined by the functions of the Compliance Committee:

It reviews compliance with the Alpine Convention and its Protocols by the Contracting Parties, based on national reports and further available information⁶⁸.

It generates regular reports on the state of compliance with the Convention and its Protocols along with proposals of decisions and recommendations⁶⁹.

It proposes measures for the improvement of reporting and for the improvement of compliance with the Convention and its Protocols, in particular by referring to best practices in implementation⁷⁰.

The selection of topics for the in-depth review (phase 2) is at the discretion of the Compliance Committee, which decides which topics to examine in depth and in what order⁷¹. All areas are eligible in which implementation deficiencies were identified in the Compliance Committee's final report from phase 1 (hereinafter referred to as the synthesis report). The most important of these areas are addressed in the decisions and recommendations of this synthesis report.

3.1.3.1.2 Bodies involved and timeline of the procedure

The Convention bodies involved in the ordinary compliance procedure are the Compliance Committee, the Permanent Committee⁷² that is the executive body of the COP, the COP and the Permanent Secretariat.

Basically, the procedure is as follows: The Contracting Parties submit their national reports to the Compliance Committee via the Permanent Secretariat, and the Committee, with substantial support from the Permanent Secretariat⁷³, draws up a synthesis report which also contains draft decisions and recommendations for improving the implementation of the Convention. This draft is then submitted to the COP for approval via the Permanent Committee⁷⁴.

⁶⁶ See point II.3.1.1. of the Alpine Convention compliance mechanism.

⁶⁷ The originally planned reporting interval of four years proved to be far too short in view of the scope and duration of the procedure.

⁶⁸ See point II.2.1. of the Alpine Convention compliance mechanism.

⁶⁹ See point II.2.5. of the Alpine Convention compliance mechanism.

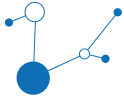
⁷⁰ See point II.2.6. of the Alpine Convention compliance mechanism.

⁷¹ See point II.3.2.9. of the Alpine Convention compliance mechanism.

⁷² According to Art 8 para 6 b) of the Alpine Convention the Permanent Committee shall collect and assess documents with regard to the implementation of the Convention and Protocols and shall submit them to the Alpine Conference for examination.

⁷³ Werner Schroeder, 'Die Alpenkonvention - Inhalt und Konsequenzen für das nationale Umweltrecht' in Natur und Recht, Nr. 3/2006, p. 135, considers 'that the practical importance of the Permanent Secretariat for the effective implementation of the Alpine Convention cannot be overestimated', translation by the author.

⁷⁴ See point II.3.2.6. of the Alpine Convention compliance mechanism.



A special feature of the Compliance Committee is the position it occupies within the structure of the AC Working Bodies. The Compliance Committee is not subordinate to the Permanent Committee but is on the same level as the Permanent Committee, because the latter can only comment on the Compliance Committee's reports, when necessary but must forward these reports unaltered to the next COP⁷⁵. The Permanent Committee has not yet made use of this option.

It is noteworthy that all thematic Protocols contain identical provisions on compliance monitoring⁷⁶, which reflect the essential steps of the procedure as outlined in the Alpine Convention compliance mechanism. According to these provisions, the Contracting Parties shall regularly report to the Permanent Committee on measures taken under the Protocol, the Permanent Committee shall examine these reports to ensure that the Contracting Parties have fulfilled their obligations and shall draw up a report on the compliance of the Contracting Parties with the obligations arising from the Protocol for the attention of the COP. The COP shall take note of this report and may adopt recommendations if it finds that obligations have not been met. These provisions are implemented by means of a possible comment on the synthesis report of the Compliance Committee by the Permanent Committee and forwarding of the report to the COP.

The Alpine Convention compliance mechanism defines a tight timeline for the procedure⁷⁷. The draft synthesis report shall be submitted to the Contracting Parties and Observers within nine months after submission of the national reports. This is followed by a three-month period for comments by Contracting Parties and Observers. The final version of the draft synthesis report shall be presented to the Permanent Committee within six months after having received the comments by affected Contracting Parties. Finally, the Permanent Committee has two months to submit the final version of the draft synthesis report to the COP⁷⁸.

3.1.3.1.3 Fact finding and assessment of the facts

The implementation reports of the Contracting Parties covering the Alpine Convention and all thematic Protocols submitted every ten years form the main basis for fact finding. These reports are to be prepared based on a questionnaire developed by the Compliance Committee and approved by the COP. The reporting represents a considerable effort for the Contracting Parties, as the blank questionnaire alone comprises approximately 130 pages⁷⁹. The wording of the questionnaire generally follows the wording of the Alpine Convention and its Protocols. Separate questions deal with difficulties in implementing the individual Protocols. To simplify the work, the Contracting Parties may limit their reports to changes occurred with respect to previous national reports, but it is recommended that a blank questionnaire be used every second reporting. Where possible, national reports should only cover measures and projects implemented during the period between the submission of the last national report and the submission of the current one. The Contracting Parties are free to use independent experts when drafting their national reports. However, the national reports must originate from a body that can be attributed to the relevant Contracting Party⁸⁰.

⁷⁵ See point II.3.2.7. of the Alpine Convention compliance mechanism.

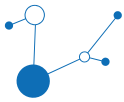
⁷⁶ Art 17 Protocol on Spatial Planning and Sustainable Development, Art 20 Protocol on Mountain Farming, Art 23 Protocol on Nature Protection and Landscape Conservation, Art 16 Protocol on Mountain Forests, Art 25 Protocol on Tourism, Art 24 Protocol on Soil Conservation, Art 18 Protocol on Energy and Art 21 Protocol on Transport.

⁷⁷ This timeframe has not yet been met in any phase 1 of the ordinary compliance procedure, the reason mainly being the sheer volume of material to be processed.

⁷⁸ See points II.3.2.3., II.3.2.4., II.3.2.6. and II.3.2.7. of the Alpine Convention compliance mechanism

⁷⁹ The link <https://www.alpconv.org/en/home/organisation/compliance-committee/#c916> leads to the questionnaire.

⁸⁰ See point I.1.1. of the Alpine Convention compliance mechanism.



The reporting obligations apply to all Contracting Parties that are bound by the respective Protocol, including the EU⁸¹. The national reports must be submitted in one of the Alpine languages (French, German, Italian, Slovenian) and in English⁸². As soon as they arrive, the Permanent Secretariat forwards them to the Contracting Parties and Observers and publishes them on the Alpine Convention's website⁸³.

The basis for fact finding in phase 2 are the responses of the Contracting Parties to questions concerning the implementation of the obligations arising from the provisions that are subject of the in-depth review. These questions, which also address the aspect of implementation effectiveness, are first developed by the Permanent Secretariat and then approved by the Compliance Committee.

In addition, the Compliance Committee may use any other source of information, such as reports on the State of the Alps, reports, surveys and opinions drawn up by Thematic Working Bodies, project results and expert opinions. Furthermore, the Compliance Committee may also draw on good implementation practices of the Contracting Parties⁸⁴.

The consultation of and the discussion with experts from academia and practice proved fruitful especially in phase 2, whether it be when determining priority areas for in-depth review topics or when discussing implementation measures. As regards the selection of experts, attention should be paid to ensure as much as possible a balance in terms of professional and geographical background to obtain the broadest possible insight into the topic and its challenges.

The assessment of the facts is based on a proposal by the Permanent Secretariat for the section 'Findings on implementation and effectiveness' of the draft synthesis report. This section also addresses any contradictions arising from the information provided by the Contracting Parties. Any omissions in answering the questionnaire is addressed in the section entitled 'Measures taken by the Contracting Parties' of the draft synthesis report. The section entitled 'Statement by Contracting Parties and Observers', which often contains controversial assertions, also supplements the factual material of the draft synthesis report.

3.1.3.1.4 Legal evaluation and consequences

The legal evaluation and the consequences in the form of recommendations for decisions addressed to the COP are also included in the draft synthesis report, but in the section entitled 'Conclusions and recommendations'. However, the Contracting Party concerned may agree to remedy the deficiencies identified and specify concrete measures to this end. In this case, the Compliance Committee may refrain from proposing the adoption of further decisions or recommendations by the COP⁸⁵.

The procedure is concluded at the political level of the COP. Based on the reports and recommendations for decisions adopted by the Compliance Committee and forwarded to the COP via by the Permanent Committee, the COP may adopt decisions or recommendations. As with decision-making in the Compliance Committee, such recommendations are adopted by consensus; if all efforts to reach consensus have been exhausted and the chair expressly states this, such recommendations may be adopted by a three-quarters majority of the Contracting Parties present and entitled to vote⁸⁶.

⁸¹ See point II.3.1.4. of the Alpine Convention compliance mechanism.

⁸² According to point II. 1.3. of the Alpine Convention Compliance mechanism, the draft synthesis report is translated into French, German, Italian and Slovenian before being sent to the Permanent Committee.

⁸³ See point I.1.3. of the Alpine Convention compliance mechanism.

⁸⁴ See points II.3.2.4. (for phase 1) and II.3.2.10. (for phase 2) of the Alpine Convention compliance mechanism.

⁸⁵ See points II.3.2.5. (for phase 1) and II.3.2.12. (for phase 2) of the Alpine Convention compliance mechanism.

⁸⁶ See point II.4.1. of the Alpine Convention compliance mechanism. According to Art 18 of the rules of procedure of the Alpine Conference the presence of two thirds of the Contracting Parties is required.



This means that, with the justified exception of inquiries on the territory of one Party, no individual Contracting State has the right of veto⁸⁷.

The COP may adopt the following decisions and recommendations: advising and supporting a Contracting Party on compliance issues, supporting a Contracting Party in developing a compliance strategy, providing experts to assist the Contracting Party or Parties concerned, conducting on-site inquiries, with the consent of the Contracting Party or Parties concerned, to identify compliance problems and possible measures, promoting cooperation between the Contracting Party or Parties concerned and governmental and non-governmental organisations, requesting to the Contracting Party/Parties concerned to develop a compliance strategy, demanding a timetable for compliance, explaining good examples of implementation as well as other suitable non-confrontational, non-judiciary, non-discriminating and consultative measures⁸⁸.

The recommendations usually concern the procedure and the content of the provisions. Examples of recommendations from the Compliance Committee's latest synthesis report include timely mutual information and consultation on projects with cross-border implications, continuing the efforts to use land sparingly, improving the allocation of the true costs of the various modes of transport according to the polluter-pays principle, and continuing to promote sustainable tourism. The call to develop approaches to balancing different usage requirements and interests is also important⁸⁹. The decisions and recommendations in phase 2 are, of course, more specific as they relate to the topic of the in-depth review.

After adoption by the COP, the synthesis report of the Compliance Committee and the decisions and recommendations shall be published in an appropriate manner by the Contracting Parties and the Permanent Secretariat⁹⁰. The publication of the reports and recommendations may have a certain "pillory effect" and puts some pressure on the Contracting Parties to comply with the Convention's provisions⁹¹.

3.1.3.2. In-depth reviews conducted so far

The first in-depth review dealt with different aspects of **environmentally friendly tourism**. In the course of this procedure, the Compliance Committee developed recommendations for improving the implementation of Articles 5(1) and 5(2) Tourism Protocol on managing tourism and the preparation and implementation of relevant guidelines, development programmes and sectoral plans, of Articles 6(1), 6(2), 6(3) and 6(4) Tourism Protocol on making environmentally friendly tourism in the Alps more competitive, adapting existing tourist facilities and equipment to meet ecological requirements, and promoting tourism, of Article 18 Tourism Protocol on the staggering of holidays as well as of Article 12(1) Transport Protocol on reducing the environmental damage caused by air transport. These recommendations were adopted by the Alpine Conference in 2016⁹².

⁸⁷ See Markus Reiterer, 'Der Einhaltungsmechanismus der Alpenkonvention' in Die Alpenkonvention. Fragen-Antworten-Perspektiven, CIPRA Austria ed. Nr. 40/2005 pages 3 and 4.

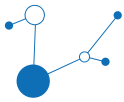
⁸⁸ See point II.4.2. of the Alpine Convention compliance mechanism.

⁸⁹ See the section 'Conclusions and Recommendations' of the synthesis report adopted by the Alpine Conference in 2022 available at <https://www.alpconv.org/en/home/organisation/compliance-committee/#c770>.

⁹⁰ See point II.4.3. of the Alpine Convention compliance mechanism.

⁹¹ See Werner Schroeder, 'Die Alpenkonvention - Inhalt und Konsequenzen für das nationale Umweltrecht' in Natur und Recht, Nr. 3/2006, p. 136.

⁹² The final report can be downloaded at <https://www.alpconv.org/en/home/organisation/compliance-committee/#c771>.



The topics of the second in-depth review were related to the **economical use of soil**. The Compliance Committee developed recommendations for improving the implementation of Art 9(3) a Spatial Planning Protocol on the delimitation of urbanized areas and measures for ensuring that the urbanized areas are actually built upon, of Art 9(3) e Spatial Planning Protocol on the limitation of secondary homes, of Art 9(3) f Spatial Planning Protocol on the development of urbanized areas along the routes served by transport infrastructures and/or in continuity with existing constructions as well as of Art 7(2) Soil Conservation Protocol on the limitation of soil sealing and soil consumption. These recommendations were adopted by the COP in 2019⁹³. Furthermore, the COP took the decision that the Contracting Parties should report on the implementation of these recommendations five years after their adoption. From today's perspective it is not possible to say whether this was a trial run for opening a third phase of the ordinary procedure or a stand-alone decision. The review showed that significant activity at various levels has been undertaken by the Contracting Parties, but that certain deficiencies remain, particularly with respect to soils that have high development potential but simultaneously require a high level of protection, regarding the planning sovereignty of municipalities limiting the ability of higher-level planning authorities to act in favour of an economical use of soil and concerning fiscal measures. These results were incorporated into a set of corresponding recommendations. The final report of this second review is expected to be adopted by the COP in 2027.

The third in-depth review concerned the **conservation of wetlands and moors**. The Compliance Committee developed recommendations for improving the implementation of Art 9(1) Soil Conservation Protocol on the preservation of high moors and lowland moors and discontinuation of the use of peat, of Art 9(2) Soil Conservation Protocol on the limitation of drainage schemes in wetlands and moors to the upkeep of existing networks and of Art 9(2) Soil Protection Protocol on the use of moor soils for agricultural purposes. In this case too, the final report is expected to be adopted by the Alpine Conference in 2027.

Finally, the Compliance Committee has already decided on the topic for the next in-depth review. Under the working title "**Fragile areas in the Alps**" the procedure will focus on Art 14(1) Soil Conservation Protocol on the effects of tourism infrastructures as well as on Articles 9(2) lit e and (3) lit c Spatial Planning Protocol about defining areas subject to natural hazards, where building of infrastructures and installations should be avoided.

3.1.3.3. Extraordinary compliance procedure

The extraordinary compliance procedure consists of preparing a report on a request for reviewing a case of supposed non-compliance with the Convention and its Protocols submitted by the Contracting Parties or Observers⁹⁴ and is subject to the same procedural rules as the ordinary compliance procedure⁹⁵.

The procedure is initiated either by a Contracting Party or by an Observer. Since the compliance mechanism was established, no Contracting Party has yet made use of this option⁹⁶. The faculty of the Observers to trigger a procedure shows the important role of civil society in the Alpine Convention⁹⁷. This participatory approach transforms compliance from purely a diplomatic issue between States

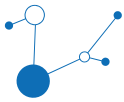
⁹³ The final report can be downloaded at <https://www.alpconv.org/en/home/organisation/compliance-committee/#c771>.

⁹⁴ See point II.2.3. of the Alpine Convention compliance mechanism.

⁹⁵ See point II.3.1.2. of the Alpine Convention compliance mechanism.

⁹⁶ Justine Bendel, Yusra Suedi, 'State-to-State Procedures before Environmental Compliance Committees: Still Alive?' in Voigt C, Foster C, eds. *International Courts versus Non-Compliance Mechanisms: Comparative Advantages in Strengthening Treaty Implementation* Cambridge University Press, 2024, p. 127 identify two circumstances that may make State-to-State compliance procedures seem undesirable to States. First, State-to-State compliance procedures can be perceived as hostile mechanisms by States. Second, States may lack the motivation to defend communal interests through State-to-State triggers.

⁹⁷ Werner Schroeder, 'Die Alpenkonvention - Inhalt und Konsequenzen für das nationale Umweltrecht' in *Natur und Recht*, Nr. 3/2006, p. 136, sees the option of NGOs initiating extraordinary procedures as a 'glimmer of hope with regard to the effectiveness of the Alpine Convention', translation by the author.



to one that incorporates environmental monitoring and advocacy from civil society. However, not every environmental or nature conservation organisation, or even private individual, can assert non-compliance with obligations under the Alpine Convention and its Protocols by a Contracting Party. Only NGOs that have observer status in the Alpine Conference can do so. Observer organisations such as CIPRA International and Club Arc Alpin are often umbrella organisations of national associations, which in turn count numerous different associations, bodies and even private individuals among their members. Sometimes it is argued that the competence of the international umbrella organisations alone justifies restricting the right to apply for an extraordinary compliance procedure to these organisations⁹⁸. National associations, bodies or private individuals retain the option of working within their organisations to initiate proceedings before the Compliance Committee.

The scope of the extraordinary procedure relates to the examination of alleged non-compliance with the Convention and its Protocols. This also includes complaints concerning the obligations of a Contracting Party with regard to legislation⁹⁹. It should be noted that the Compliance Committee is not bound by the content of the request submitted. Once a request has been accepted, the Compliance Committee is entitled to decide under which legal aspects the request should be examined.

The Convention bodies involved are the same as those involved in the ordinary procedure. The steps of the procedure are also largely similar. It is particularly worth mentioning that where a request concerns the Party holding the chair, the Compliance Committee may, deviating from the ordinary compliance procedure, entrust for the duration of that Party's chairmanship another Party with the chairmanship for the purpose of dealing with that request¹⁰⁰.

Regarding fact finding, the Compliance Committee has established minimum requirements that a request for review of alleged non-compliance with the Convention and its Protocols must meet. Accordingly, a detailed description of the national procedure and the facts of the case, including appropriate maps and illustrations must be submitted in the applicable language regime of the Alpine Convention¹⁰¹. Following the Committee's decision to initiate the procedure, the Contracting Party concerned presents a statement. In addition, the Compliance Committee may use any other relevant material. As in phase 2 of the ordinary compliance procedure, consultation of and discussion with experts from academia and practice proved particularly useful for specific scientific questions and complex legal issues.

Assessment of the facts, legal evaluation and consequences in the form of recommendations for decisions addressed to the COP are also similar to those in the ordinary compliance procedure.

One special feature of the extraordinary compliance procedure concerns the publication of the final report. The Compliance Committee may decide to publish the final report it has adopted on requests for reviewing a case of suspected non-compliance with the Convention and its Protocols, without recommendations for decisions, even before the following COP has taken place. In doing so, it shall refer to the further procedural steps to be taken before the following COP¹⁰².

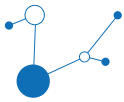
⁹⁸ See Stefan Cuypers, Andreas Güthler, Stefan Köhler, Jochen Schumacher and Bernd Söhnlein ,Leitfaden zur rechtlichen Umsetzung der Bestimmungen der Alpenkonvention in Deutschland, CIPRA Germany ed. 2008, p. 61.

⁹⁹ See Stefan Cuypers, Andreas Güthler, Stefan Köhler, Jochen Schumacher and Bernd Söhnlein ,Leitfaden zur rechtlichen Umsetzung der Bestimmungen der Alpenkonvention in Deutschland, CIPRA Germany ed. 2008, p. 61.

¹⁰⁰ See point II.3.1.2. of the Alpine Convention compliance mechanism.

¹⁰¹ See document ImplAlp/2012/16/9/2.

¹⁰² See point II.4.3. of the Alpine Convention compliance mechanism.



3.1.3.4. Extraordinary compliance procedures conducted so far

The first extraordinary compliance procedure concerned the project to construct a **wind farm** consisting of 19 wind turbines on the summit ridge of **Sattelberg** in the municipality of Brenner/Brennero, located directly on the national border between Austria and Italy.

The request for review of a suspected non-compliance was lodged by the mountaineering associations of the Alps Club Arc Alpin and concerned Article 2(4) Energy Protocol, which stipulates that the Contracting Parties shall preserve protected areas and their buffer zones, other protected and quiet zones as well as areas of unspoilt nature and landscapes. The request was submitted at a point in time when the authorization for the construction of the wind farm was still valid, but the construction works had not yet begun. Subsequently, the authorisation was revoked by the Administrative Court Bolzano/Bozen, a decision that was later confirmed by the State Council in Rome.

The Compliance Committee decided to suspend the procedure until a final decision is made by an administrative authority or a court. After the binding confirmation from the State Council in Rome the file was closed as the legal basis for the request disappeared. In this context, however, it is important to note that the Alpine Convention compliance mechanism does not require national legal remedies to be exhausted as a prerequisite for the processing of a request.

The second extraordinary compliance procedure dealt with the construction of a **cable car** on the **Val Gronda Peak** at the margin of the ski resort of Ischgl and in the immediate vicinity of the ski touring area Heidelberger Hütte.

In this case too, the request for review of a suspected non-compliance was lodged by the mountaineering associations of the Alps Club Arc Alpin. It concerned Article 6(3) Tourism Protocol, which stipulates that the Contracting Parties shall ensure that in areas attracting high numbers of tourists, a balance is struck between intensive and extensive forms of tourism. The request was submitted at a time when the authorisation given by the Regional Government of Tyrol was legally binding.

As a result of the procedure¹⁰³, the Compliance Committee recommended to improve cross-border consultations in case of projects of this kind¹⁰⁴. Furthermore, the Committee issued a recommendation addressed to Austria to ensure that art. 6(3) Tourism Protocol is fully implemented in all future administrative procedures of this sort. As this provision contains several vague legal terms the Committee suggested that guidelines for the interpretation of Article 6(3) Tourism Protocol be elaborated.

The Compliance Committee subsequently developed such guidelines¹⁰⁵ to facilitate a harmonized interpretation and implementation. These guidelines shall be taken into account by the Contracting Parties within the meaning of Article 31(3)(a) of the Vienna Convention on the Law of Treaties, defining the interpretation rules of international agreements¹⁰⁶.

¹⁰³ See the final report at <https://www.alpconv.org/en/home/organisation/compliance-committee/#c772>.

¹⁰⁴ In this context, it should be noted that the summit station of the cable car is situated only 8m from the national border between Austria and Switzerland.

¹⁰⁵ See <https://www.alpconv.org/en/home/organisation/compliance-committee/#c917>.

¹⁰⁶ Interpretation criteria are the ordinary meaning of the terms of the treaty in their context and in the light of its object and purpose including inter alia any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.



The third extraordinary compliance procedure concerned twenty **modifications of the protected landscape “Egartenlandschaft”** close to Miesbach in Bavaria.

The request for review of a suspected non-compliance was lodged by CIPRA International and concerned Article 11(1) Nature Protection Protocol which stipulates that the Contracting Parties undertake to preserve, manage and, where necessary, to extend the existing protected areas, in keeping with their protective function. The request was submitted at a time when the authorisation given by the competent administrative body in Bavaria was legally binding.

The Compliance Committee found no indication for non-compliance with 11(1) Nature Protection Protocol and stated in its decision that any future modification has to comply with the protection standard defined in this provision. Furthermore, the Committee noted that the concept of the protective function must be kept also in a cumulative consideration of all measures carried out and planned and listed several criteria for assessing whether modifications respect the protective function¹⁰⁷.

In this case too, guidelines to facilitate a harmonized interpretation and implementation of Article 11(1) Nature Protection Protocol¹⁰⁸ were developed by the Committee. These guidelines shall also be taken into account by the Contracting Parties according to the Vienna Convention on the Law of Treaties.

The most recent extraordinary procedure dealt with the so-called **Emergency Regulation to accelerate the deployment of Renewable Energy** (EU) 2022/2577 and with the Renewable Energy Directive (EU) 2023/2413, called **RED III Directive**.

The request lodged by CIPRA International for review of a suspected non-compliance was lodged by CIPRA International. It asserted a possible non-compliance of the two EU secondary sources of law with the Articles 2(2) and 6(1) Energy Protocol and the Articles 7 and 9 Soil Conservation Protocol. Specifically, the request concerned among other things the exemption from Environmental Impact Assessments and the overriding public interest granted to renewable energy installations.

The procedure triggered with this request was highly complex, which resulted from the interaction of three different legal systems, international law, EU law and national law. The Compliance Committee had also to consider the monopoly of interpretation of EU law by the Court of Justice of the European Union. It was the first extraordinary compliance procedure dealing with a legislative act. Until then, only individual decisions by the administration had been subject to review.

The decision taken by the Compliance Committee has far-reaching consequences for the implementation of EU secondary legislation in compliance with the Alpine Convention:

The Energy Protocol and the Soil Protection Protocol are so called mixed EU agreements that take precedence over EU secondary law. When adopting secondary legislation, the EU must adhere to the obligations set out in these Protocols of the Alpine Convention. The EU Member States, which are also parties to the Alpine Convention and its Protocols, are bound by the relevant provisions both under EU and international law. EU secondary law, in this case, the relevant articles of the Emergency Regulation and the RED III Directive must be interpreted in accordance with the Energy Protocol and the Soil Protection Protocol.

¹⁰⁷ See the final report at <https://www.alpconv.org/en/home/organisation/compliance-committee/#c772>.

¹⁰⁸ See <https://www.alpconv.org/en/home/organisation/compliance-committee/#c917>.



The provisions of the Emergency Regulation and the RED III Directive give the EU Member States sufficient discretionary scope to comply with their obligations under the Energy Protocol and the Soil Protection Protocol. This regards in particular the implementation of the RED III Directive by the EU Member States, where they must exercise their discretion in accordance with both their EU legal and international legal obligations.

The decision of the Committee was made in a timely manner, as the deadline for the implementation of the RED III Directive by the national authorities, in particular the designation of acceleration areas, ends in February 2026. For this reason, the final report on this procedure¹⁰⁹ has been published provisionally prior to the next COP.

3.2. The Alpine Convention's dispute settlement procedure

The legal basis for the dispute settlement procedure under the Alpine Convention is a separate Protocol, which is not an implementation protocol in the traditional sense, but rather a supplement to the Alpine Convention¹¹⁰. Since the entry into force of the Dispute Settlement Protocol, no Contracting Party has yet made use of this option.

This is because individual Contracting Parties do not set themselves up as guardians of the Convention if they are not affected by a breach of the agreement by another Contracting Party.¹¹¹

The procedure stipulates that, in the event of a dispute regarding the interpretation or implementation of the Alpine Convention or one of its Protocols, the Contracting Parties must first endeavour to resolve it through consultation.¹¹² If a dispute is not settled within six months of a written request for consultations by one of the Contracting Parties involved, a Party involved may initiate arbitration to settle the dispute by written notification to the other Party and to the Presidency of the COP¹¹³. Based on this initiative by one Party, arbitration is mandatory and not an option available to the other Contracting Parties, to which they would have to submit in specific cases.¹¹⁴ The arbitration court shall consist of three members, with each Party to the dispute appointing one member and the members nominated appointing the chairperson by mutual agreement.¹¹⁵ The arbitration court shall decide by a majority vote of its members. The decision shall be binding, final and implemented without delay by the Parties.¹¹⁶ From a procedural point of view, the possibility of issuing an interim measure to protect the rights of each Party to the dispute is worth mentioning.¹¹⁷ The absence or failure of a Party to the dispute to comment on the matter shall not constitute an obstacle to continuing the procedure. However, before the arbitral court makes its final decision, it must assure itself that the claim is well-founded in factual and legal terms.¹¹⁸ The arbitration court shall render its final decision within six months of the date on which it is constituted. However, if it considers an extension of this period to be necessary, this extension may not exceed a further six months.¹¹⁹ With its dispute settlement

¹⁰⁹ See <https://www.alpconv.org/en/home/organisation/compliance-committee/#c772>.

¹¹⁰ The topic of 'dispute settlement' does not belong to the topics listed in Art 2(2) of the Alpine Convention for which, according to Art 2(3) of the Alpine Convention, Protocols are to be agreed upon to specify the details of the implementation of the Convention. See also Ewald Galle, 'Das Übereinkommen zum Schutz der Alpen (Alpenkonvention) und seine Protokolle', Supplement, 2009, p 65.

¹¹¹ See Werner Schroeder, 'Die Alpenkonvention - Inhalt und Konsequenzen für das nationale Umweltrecht' in Natur und Recht, Nr. 3/2006, p. 135.

¹¹² See Art 1 of the Dispute Settlement Protocol.

¹¹³ See Art 2 of the Dispute Settlement Protocol.

¹¹⁴ See Ewald Galle, 'Das Übereinkommen zum Schutz der Alpen (Alpenkonvention) und seine Protokolle', 2002, p. 210.

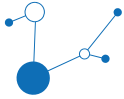
¹¹⁵ See Art 3 paras a and b of the Dispute Settlement Protocol.

¹¹⁶ See Art 12 of the Dispute Settlement Protocol.

¹¹⁷ See Art 6 of the Dispute Settlement Protocol.

¹¹⁸ See Art 10 of the Dispute Settlement Protocol.

¹¹⁹ See Art 11 of the Dispute Settlement Protocol.



to be performed by an international court, the Alpine Convention is an exception in international environmental law.¹²⁰

3.3. The components of the Alpine Convention's compliance monitoring framework

Following up on the explanations in section 2.3, it can be summarised that the compliance regime of the Alpine Convention consists primarily of performance information and a multilateral non-compliance procedure. Most of the non-compliance response measures are incentives. The only disincentives foreseen consist of requesting to the Contracting Party/Parties concerned to develop a compliance strategy and of demanding a timetable for compliance¹²¹, but this option has never been used. The fourth component, the dispute settlement procedure has also never been used to date.

3.4. Strengths and weaknesses of the Alpine Convention's compliance monitoring framework

The following remarks refer to the Alpine Convention compliance mechanism, as experience has so far only been gained with this instrument.

3.4.1. Strengths and achievements

The ordinary compliance procedure provides a regular overview of the difficulties of complying with the provisions of the Alpine Convention and its Protocols and outlines the potential for improvements.

The requirement for regular national reporting helps to raise awareness of the legal obligations under the Alpine Convention and its Protocols among national authorities and courts, in particular subordinate local and regional authorities.

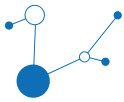
Particularly noteworthy is the important contribution of in-depth reviews and extraordinary compliance procedures to the interpretation of provisions of the Alpine Convention and its Protocols, which is a significant aid to the application of the Convention by the administration in concrete cases. In this sense, the mechanism is an instrument of facilitation of compliant implementation of the Convention's provisions.

The fact that the exhaustion of domestic remedies is not a prerequisite for initiating an extraordinary compliance procedure may prevent the need to wait until a violation of rights causes potentially irreversible damage.

Public participation in the form of the extraordinary compliance procedure initiated by Observer organisations strengthens the shared responsibility of States and civil society for the sensitive Alpine region and makes a valuable contribution to clarifying the legal content of the obligations.

¹²⁰ See Werner Schroeder, 'Die Alpenkonvention - Inhalt und Konsequenzen für das nationale Umweltrecht' in *Natur und Recht*, Nr. 3/2006, p. 135.

¹²¹ See section 3.1.3.1.4.



3.4.2. Weaknesses and critical issues

In many cases, the obligations arising from the Alpine Convention and its Protocols are not clearly defined, making it difficult to assess compliance¹²².

The quantity of material to be processed in phase 1 of the ordinary compliance procedure is huge. The blank questionnaire alone is approximately 130 pages long. It is easier to deal with the material for the in-depth review in phase 2 of the ordinary compliance procedure and for extraordinary compliance procedures because in these cases the topics are limited.

Difficulties encountered by the Contracting Parties in answering the questionnaire result in empty spaces that do not allow for review of the measures taken. This applies also to some questions in the questionnaire that can only be answered with yes or no. The Contracting Parties often do not provide any information on the effectiveness of the measures taken, making it difficult to assess them.

Several so called “Best Practices” in the national reports and therefore also in the synthesis report by the Compliance Committee are based solely on information provided by the Contracting Parties. As there are no objective criteria for selecting them, these are often concrete examples of implementation than good practices or even best practices.

Experience shows that very often Contracting Parties do not comply with agreed deadlines for submitting reports or do not submit their reports according to the language regime in place. Delays in submitting the national reports and the sheer amount of material to be processed by the Permanent Secretariat jeopardize meeting the deadlines set in the compliance mechanism.

Participation in extraordinary compliance procedures initiated by Observer organisations with limited resources is a considerable challenge for these organisations in light of the legal expertise required, the translation costs incurred for the submissions and the travel and accommodation costs for taking part in the meetings of the Compliance Committee.

The review of the Declaration on Population and Culture¹²³ is contrary to the system, because the Declaration is only a political commitment by the Contracting Parties and does not constitute a binding document under international law. Therefore, the review of the implementation of the Declaration cannot be based on the ascertainment of any failure to comply with obligations under international law but can only offer a factual list of what the Contracting Parties have done in fulfilment of the Declaration's requirements. This aspect has resulted in some Contracting Parties not submitting reports at all.

An analysis of the available material showed that, despite being a legally non-binding document, the Declaration on Population and Culture is to a very large extent implemented by the Contracting Parties with regard to both the objectives and the 70 implementation measures contained in the Declaration. Nevertheless, many of the measures and activities listed in the Declaration are implemented regardless of their connection to the Declaration. The mere fact of belonging to the area of application of the Alpine Convention in many cases does not give rise to additional special measures, with the risk that the peculiarities of the territory are not sufficiently considered. This applies also to the implementation of many provisions of the binding Protocols.

¹²² See Ewald Galle, ‘Das Übereinkommen zum Schutz der Alpen (Alpenkonvention) und seine Protokolle - Ergänzung’, 2009, p. 66.

¹²³ The Alpine Conference decided in 2004 to draw up a political Declaration on the subject of “Population and Culture” and to submit it for review in accordance with the compliance mechanism.



4. The Carpathian Convention's Compliance Monitoring Framework

The Framework Convention on the Protection and Sustainable Development of the Carpathians known as Carpathian Convention is a MEA among all Carpathian States, i.e. the Czech Republic, Hungary, Poland, Romania, Serbia, Slovakia and Ukraine. As most Framework Conventions it sets general objectives and principles, creates basic institutions and procedures and outlines a vision for the environmental protection and sustainable development of the region. The objectives, which embody this vision, may be tailored into concrete goals and measures in specific independent treaties under international law, the so-called Protocols.

For the time being the Carpathian Convention is equipped with binding Protocols on Biodiversity and Sustainable Use of Biological and Landscape Diversity, Sustainable Forest Management, Sustainable Tourism, Sustainable Transport and Sustainable Agriculture and Rural Development.

In contrast to the Alpine Convention, the Carpathian Convention does not have a detailed mechanism for monitoring compliance with its provisions and the ones of the thematic Protocols¹²⁴ or its own Protocol for Dispute Settlement, but only an approach to monitoring compliance outlined in key points in the Framework Convention and in the Protocols as well as a quite generic provision on dispute settlement¹²⁵ in the Framework Convention.

4.1. Key points of the Carpathian Convention's compliance monitoring framework

The Convention bodies involved in monitoring compliance are the Carpathian Convention Implementation Committee (CCIC), the COP, the Working Groups and the Secretariat. The provisions on compliance are set out in regulations governing the functions of these bodies.

The steps foreseen for compliance monitoring can be summarised as follows: Information on the implementation of the Convention and the Protocols by the Parties is forwarded to the CCIC from various sources. The CCIC then collects and analyses the information with support of the Secretariat and subsequently proposes decisions and recommendations for approval by the COP.

4.1.1. Reporting on the implementation of the Carpathian Convention and its Protocols

As regards implementation, the Carpathian Convention obliges the Contracting Parties to take appropriate measures in the areas covered by Articles 4 to 13¹²⁶ to achieve a comprehensive policy and cooperate for the protection and sustainable development of the Carpathians¹²⁷. The Parties may also, as appropriate, develop and adopt Protocols to ensure the implementation of the Convention¹²⁸.

¹²⁴ Gianfranco Tamburelli, 'The Carpathian Convention' in "Sustainable development and transboundary co-operation in mountain regions" -The Alpine and Carpathian Conventions", Balázs Majtényi, Gianfranco Tamburelli eds., 2009, p. 132.

¹²⁵ Gianfranco Tamburelli, 'The Carpathian Convention' in "Sustainable development and transboundary co-operation in mountain regions" -The Alpine and Carpathian Conventions", Balázs Majtényi, Gianfranco Tamburelli eds., 2009, p. 133.

¹²⁶ These areas include land resources management, conservation and sustainable use of biological and landscape diversity, spatial planning, sustainable and integrated water/river basin management, sustainable agriculture and forestry, sustainable transport and infrastructure, sustainable tourism, industry and energy, cultural heritage and traditional knowledge, environmental assessment/information system, monitoring and early warning, climate change as well as awareness raising, education and public participation.

¹²⁷ See Art 2 para 2 Carpathian Convention.

¹²⁸ See Art 2 para 3 Carpathian Convention.



The Protocols currently in force contain each an article on implementation which stipulates that the Parties shall undertake appropriate legal and administrative measures for ensuring implementation of the Protocol's provisions and monitor the effectiveness of these measures. In addition, the Parties shall explore the possibilities of supporting, through financial measures, the implementation of the provisions of the respective Protocol¹²⁹. It should be noted that only the Protocols on Sustainable Forest Management and on Sustainable Transport provide for the designation by the Parties of a relevant national authority responsible for the implementation of the respective Protocol and for making this information available to other Parties. The respective national authorities shall also be responsible for monitoring the effect of the measures taken¹³⁰.

Information on the implementation of the Convention and the Protocols comes from four sources: reporting by the Parties, reporting by the Secretariat, reporting from the Working Groups and reporting by Observers.

4.1.1.1. Reporting by the Contracting Parties

According to the Protocols in force, Parties are required to regularly report to the COP on implementation measures taken and results achieved. The Protocols stipulate also that the Parties shall regularly examine and evaluate the effectiveness of the provisions, but this is not explicitly included in the reporting obligation¹³¹. The COP shall determine the intervals and format at which the reports must be submitted¹³². To this end, the Secretariat developed a draft reporting template for a comprehensive National Report on Implementation of the Carpathian Convention covering all thematic areas of the Carpathian Convention (Articles 4-13) and its Protocols that was shared with the CCIC¹³³. In principle, reporting on the implementation of the Convention and its Protocols should take place every three years, timed to coincide with the regular meetings of the Ministerial Conference. COP 6 in 2020 took note of this draft template but its complex nature and broad scope required further consultation. Instead, Parties were encouraged to use the Data Reporting Tool (DaRT)¹³⁴ developed by UNEP for harmonized, less burdensome reporting. This tool allows States to enter information once and use it simultaneously for various reports (e.g. Carpathian Convention and CBD). These two lines of action were also retained by COP 7, whereby making further efforts in establishing a comprehensive and practical reporting system for the implementation of the Carpathian Convention and all its Protocols was encouraged, taking into consideration the use of supporting tools such as the DaRT¹³⁵.

¹²⁹ See Art 21 paras 1 and 2 Protocol on Conservation and Sustainable Use of Biological and Landscape Diversity, Art 20 paras 1 and 2 Protocol on Sustainable Forest Management, Art 27 paras 1 and 2 Protocol on Sustainable Tourism, Art 17 paras 1 and 2 Protocol on Sustainable Transport and Art 19 paras 1 and 2 Protocol on Sustainable Agriculture and Rural Development.

¹³⁰ See Art 20 para 3 Protocol on Sustainable Forest Management and Art 17 para 3 Protocol on Sustainable Transport.

¹³¹ See Art 29 para 1 Protocol on Conservation and Sustainable Use of Biological and Landscape Diversity, Art 26 para 1 Protocol on Sustainable Forest Management, Art 33 para 1 Protocol on Sustainable Tourism, Art 23 para 1 Protocol on Sustainable Transport and Art 25 para 1 Protocol on Sustainable Agriculture and Rural Development.

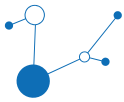
¹³² See Art 28 para 1 Protocol on Conservation and Sustainable Use of Biological and Landscape Diversity, Art 25 para 1 Protocol on Sustainable Forest Management, Art 32 para 1 Protocol on Sustainable Tourism, Art 22 para 1 Protocol on Sustainable Transport and Art 24 para 1 Protocol on Sustainable Agriculture and Rural Development.

¹³³ See the draft reporting template at

http://www.carpathianconvention.org/tl_files/carpathiancon/Downloads/03%20Meetings%20and%20Events/Implementation%20Committee/CCIC2020/Implementation%20of%20the%20Carpathian%20Convention/Carpathian%20Convention.pdf.

¹³⁴ See Decision COP 6/1, paras 3 and 4.

¹³⁵ See Decision COP 7/1, para 8.



After discussion and amendment of the Secretariat's original proposal, the COP also approved a simplified format for the national report on the implementation of the Protocol on Conservation and Sustainable Use of Biological and Landscape Diversity¹³⁶. This questionnaire¹³⁷, which follows the logic of the relevant Strategic Action Plan rather than that of the Biodiversity Protocol, asks the Parties to provide information on the measures to implement the Protocol and the results of the measures taken. However, the implementation difficulties cannot be connected to individual obligations under the Protocol, but only to general categories, which makes assessment difficult.

Reporting to the COP is done via the CCIC which meets at least once a year to assess the implementation of the Convention and its Protocols. The Secretariat compiles information on implementation of the Convention into an annual progress report, which the Parties review and elaborate through the CCIC. These annual progress reports are then compiled into a comprehensive progress report on implementation, which is submitted to the COP for information. The specific draft template from 2020 is not yet used as a standardized annual reporting document for the CCIC.

4.1.1.2. Reporting by the Secretariat

The Secretariat of the Carpathian Convention was established directly by a provision in the Convention¹³⁸. It performs traditional secretarial functions, such as making arrangements for sessions of the COP and providing them with services as required, facilitating research, communication and information exchange on matters relating to the Convention as well as coordinating its activities with the secretariats of other relevant international bodies and conventions. Other functions relate to passive and active reporting, such as compiling and transmitting (to other Convention bodies) reports submitted to it, preparing reports on the exercising of its functions under the Convention and its Protocols, including financial reports, and present them to the COP¹³⁹. Finally, a standard catch-all clause is also provided for. The Secretariat shall perform other secretariat functions as may be determined by the COP¹⁴⁰.

With regard to monitoring compliance, the Secretariat has no mandate to make official assessments, let alone to take enforcement action. However, the Secretariat regularly receives written communications related to complaints about alleged cases of non-implementation of the Convention and its Protocols, which are forwarded to the relevant bodies with the aim to raise awareness regarding the complaint¹⁴¹.

¹³⁶ See Decision COP 5/4, para 2.

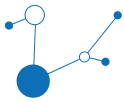
¹³⁷ See the simplified format for the national report on the implementation of the Protocol on Conservation and Sustainable Use of Biological and Landscape Diversity at http://www.carpathianconvention.org/tl_files/carpathiancon/Downloads/03%20Meetings%20and%20Events/Implementation%20Committee/CCIC_Modra%202017/documents/Doc.4_Biodiversity%20Report%20Format_simplified%20version.pdf.

¹³⁸ See Art 15 para 1 Carpathian Convention. This differs from the Alpine Convention, where the Secretariat was established by decision of the Alpine Conference based on an enabling provision in the Convention.

¹³⁹ Rule 12 of the Rules of Procedure of the for the Conference of the Parties to the Framework Convention on the Protection and Sustainable Development of the Carpathians attaches great importance to the report on the administrative and financial implications of all substantive agenda items addressed to the COP, because no such item shall be considered until the COP has received this report by the Secretariat.

¹⁴⁰ See Art 15 para 2 (f) Carpathian Convention.

¹⁴¹ An example of this is the report by the observer organisation NGO Ecosphere on “Violations of Environmental and Urban Planning Legislation of Ukraine during the Construction of Wind Farms at High Altitudes of the Mountain Ranges of the Ukrainian Carpathians”, which was brought to the attention of the CCIC at its meeting in Belgrade on 2/3 December 2025. This report addressed alleged violations of the Carpathian Convention without specifying the relevant articles of the Framework Convention and/or the Protocols.



4.1.1.3. Reporting by the Working Groups

Relevant information can also come from the Working Groups¹⁴², established by the COP as deemed necessary for the implementation of the Convention and whose reports are regularly reviewed by the COP, which also provides guidance to them¹⁴³. The main tasks of the Working Groups are related to providing the COP, as necessary, with technical assistance, information and advice on specific issues related to the protection and sustainable development of the Carpathians¹⁴⁴. All Working Groups report to the COP through the CCIC. The Terms of Reference of the Working Groups list specific activities relating to the implementation of the Convention. In the Working Groups on Biodiversity, Sustainable Forest Management and Sustainable Tourism this explicitly includes providing recommendations to CCIC on further implementation of the respective Protocol and the related Action Plans (Biodiversity), priority actions (Forests) and Strategy (Tourism), which amounts to an indirect mandate to monitor implementation.

4.1.1.4. Reporting by the Observers

Finally, Observers may also present any information or report on implementation of and compliance with the provisions of this Protocol to the COP and/or to the CCIC¹⁴⁵. In the case of the COP, this right of the Observers is even broader in scope, as any information or report relevant to the objectives of the Convention may be presented¹⁴⁶. Moreover, the Observers may participate in the deliberations of the COP and its subsidiary bodies on questions within their competences or scope of activities¹⁴⁷. With these provisions the Carpathian Convention is following the recent trend of increased public participation in environmental decision-making¹⁴⁸.

In addition to any State, any national, intergovernmental or non-governmental organisation whose activities are related to the Convention may be admitted as an Observer¹⁴⁹. The Rules of Procedure of the COP do not contain any further restrictions regarding conditions for the admission and participation of Observers¹⁵⁰. Therefore, the requirement that an organisation deals with matters related to the Convention is the only condition for admittance¹⁵¹.

This makes the Carpathian Convention more generous than the Alpine Convention, which imposes stricter conditions on the participation of Observers¹⁵². On the one hand, national organisations are not eligible for admission¹⁵³. On the other hand, international non-governmental organisations must be active throughout the Alpine region, have their headquarters in the Alpine region, have a permanent

¹⁴² See overview and documentation at <http://www.carpathianconvention.org/organization/organizational-structure/>.

¹⁴³ See Art 14 para 2 (e) Carpathian Convention.

¹⁴⁴ See Art 16 Carpathian Convention.

¹⁴⁵ See Art 28 para 2 Protocol on Conservation and Sustainable Use of Biological and Landscape Diversity, Art 25 para 2 Protocol on Sustainable Forest Management, Art 32 para 2 Protocol on Sustainable Tourism, Art 22 para 2 Protocol on Sustainable Transport and Art 24 para 2 Protocol on Sustainable Agriculture and Rural Development. The observer organisations also make extensive use of this right, see example in footnote 141.

¹⁴⁶ See Art 14 para 5 Carpathian Convention.

¹⁴⁷ See Rule 35 para 4 of the Rules of Procedure for the Conference of the Parties to the Framework Convention on the Protection and Sustainable Development of the Carpathians.

¹⁴⁸ See Handbook on the Carpathian Convention prepared by the Regional Environmental Centre for Central and Eastern Europe (REC) and the European Academy Bolzano (EURAC), 2007, p. 147.

¹⁴⁹ See Art 14 para 5 (b) Carpathian Convention.

¹⁵⁰ See Rule 35 of the Rules of Procedure for the Conference of the Parties to the Framework Convention on the Protection and Sustainable Development of the Carpathians.

¹⁵¹ See Handbook on the Carpathian Convention prepared by the Regional Environmental Centre for Central and Eastern Europe (REC) and the European Academy Bolzano (EURAC), 2007, p. 147.

¹⁵² Jon Marco Church and Sabaheta Ramcilovic are of the opinion that in the Alpine Convention the role of non-state actors is not as central as for the development of the Carpathian Convention. See 'Participation in the Alpine Convention' in "Sustainable development and transboundary co-operation in mountain regions" -The Alpine and Carpathian Conventions", Balázs Majtényi, Gianfranco Tamburelli eds., 2009, p. 101.

¹⁵³ See Art 5 para 5 Alpine Convention.



organisational structure and perform tasks that are not already adequately covered by other organisations with observer status¹⁵⁴. However, this latter rule has not always been applied consistently.

4.1.2. The CCIC as the hub of compliance monitoring

The CCIC consisting of representatives of the Contracting Parties has been created by the COP¹⁵⁵ which exercised its authority to establish subsidiary bodies necessary for the implementation for the Carpathian Convention¹⁵⁶. The Rules of Procedure for the COP¹⁵⁷ shall apply mutatis mutandis to the proceedings of the CCIC, except that the Chairperson of the CCIC may represent the Party in the meeting¹⁵⁸. The CCIC meets at least once every year and the Secretariat is mandated to service and support the work of the CCIC¹⁵⁹.

As any other subsidiary body, the CCIC shall provide the COP, as necessary, with technical assistance, information and advice on specific issues related to the protection and sustainable development of the Carpathians¹⁶⁰. Apart from the classic task of preparing the meetings and decisions of the COP, all functions specified in the Terms of Reference of the CCIC¹⁶¹ are relevant to compliance monitoring. These functions include to collect, assess and analyse information submitted by the Parties and Observers relevant to the implementation of the Carpathian Convention and its Protocols, to monitor the compliance by the Contracting Parties with the provisions of the Convention and its Protocols, to organize its work as Working Groups to support formulation and/or implementation of Protocols, strategies or other measures and recommendations relevant to the implementation of the Convention as appropriate, to ensure an integrated strategic approach through coordination, harmonization and examination of mutual consistency of draft Protocols, strategies or other measures and recommendations, developed under the Convention, to consider, develop and recommend new and additional Protocols, strategies, or other measures and recommendations for the achievement of the objectives of the Convention.

The relevant provisions of the Protocols currently in force also uniformly contain the basic features of a procedure for monitoring compliance with the Protocol's provisions. Accordingly, the CCIC shall collect, assess and analyse information relevant to the implementation of the respective Protocol and monitor the compliance by the Parties with the provisions of this Protocol. Then the CCIC shall present to the COP recommendations for implementation and the necessary measures for compliance with the respective Protocol and finally the COP shall adopt or recommend necessary measures¹⁶².

What exactly do the individual steps to be performed by the CCIC look like? The collection of information has just been described: All relevant information from the four sources mentioned - reporting by the Parties, reporting by the Secretariat, reporting from the Working Groups and reporting by Observers - is regularly submitted to the CCIC.

¹⁵⁴ See Art 3 para 2 of the Rules of Procedure of the Permanent Committee of the Alpine Conference.

¹⁵⁵ See Decision COP 1/3 para 4.

¹⁵⁶ See Art 14 para 2 (e) Carpathian Convention.

¹⁵⁷ See Rules of Procedure text at

http://www.carpathianconvention.org/tl_files/carpathiancon/Downloads/01%20The%20Convention/1.3.1%20Rules%20of%20Proc%20of%20the%20COP.pdf.

¹⁵⁸ See Rule 21 para 5 of the Rules of Procedure for the Conference of the Parties to the Framework Convention on the Protection and Sustainable Development of the Carpathians.

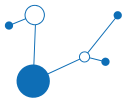
¹⁵⁹ See Decision COP 1/3 para 5.

¹⁶⁰ See Art 16 Carpathian Convention.

¹⁶¹ See Annex I of the COP 2 Decisions at

http://www.carpathianconvention.org/tl_files/carpathiancon/Downloads/01%20The%20Convention/1.3.2%20COP2%20-%20DECISIONS%20with%20Annexes%20-%20FINAL.pdf.

¹⁶² See Art 28 paras 3, 4 and 5 Protocol on Conservation and Sustainable Use of Biological and Landscape Diversity, Art 25 paras 3, 4 and 5 Protocol on Sustainable Forest Management, Art 32 paras 3, 4 and 5 Protocol on Sustainable Tourism, Art 22 paras 3, 4 and 5 Protocol on Sustainable Transport and Art 24 paras 3, 4 and 5 Protocol on Sustainable Agriculture and Rural Development.



Analysis involves breaking down data or complex subjects into components to study their relationships, focusing on "how" or "why" something works¹⁶³. Assessment is the process of making a judgment or measuring quality/performance based on evidence¹⁶⁴. Analysis provides the evidence for an assessment.

In our case analysis refers to the systematic process of studying how the provisions of the Carpathian Convention and its Protocols are put into practice. It involves interpreting the information available on the implementation of the provisions to understand the gaps between the intended design of the legal obligations and actual, real-world execution. In this sense, assessment means evaluating the extent to which the respective legal obligations have been implemented through the measures taken by the Contracting Parties.

The item 'Implementation of the Carpathian Convention: Progress Report, presentation of and discussion about ongoing and planned activities' features prominently on the agenda of every CCIC meeting. The reports presented under this agenda item by the Secretariat and the Contracting Parties, and often also by the Working Groups and other stakeholders such as the Carpathian Network of Protected Areas Steering Committee Chair, set the framework for the CCIC's activities in implementation monitoring.

A review of the meeting documents of the CCIC (meeting reports, recommendations, background documents such as progress reports) shows that analysis and assessment are not designed as a systematic process but rather take place during the discussions of the CCIC.

As a result of discussions in the CCIC, it is sometimes noted that the section of the Progress Report and the related decisions taken by the CCIC on a specific Article of the Carpathian Convention were discussed and revised¹⁶⁵.

The statements recorded in the CCIC meeting reports cover a wide range of activities and include various and extensive information on implementation instruments, such as the Programme of Work of the Carpathian Convention¹⁶⁶ or the Carpathian Biodiversity Framework¹⁶⁷ but also on projects serving implementation purposes. The contributions to the discussions at the CCIC meetings are often detailed, sometimes self-critical, but almost always occur without reference to specific provisions of the Framework Convention or the Protocols¹⁶⁸. The CCIC recommendations refer to decisions made at previous or to be made at upcoming COPs and often, but not always, refer only to the thematic areas covered by Articles 4 to 13 of the Framework Convention¹⁶⁹. This also applies to the underlying progress report. In any case, this means that there is no substantive discussion of the legal obligations entered into by the Contracting States with the ratification of the Carpathian Convention and its Protocols.

¹⁶³ See for reference <https://www.merriam-webster.com/dictionary/analysis>.

¹⁶⁴ See for reference <https://www.nsw.gov.au/education-and-training/nesa/hsc/student-guide/glossary#:~:text=Assess,%2C%20outcomes%2C%20results%20or%20size>.

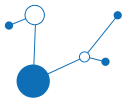
¹⁶⁵ One example among several is the report of the 4th CCIC meeting at http://www.carpathianconvention.org/tl_files/carpathiancon/Downloads/03%20Meetings%20and%20Events/Implementation%20Committee/20121205-07_CCIC_Meeting_Vienna/General_Documents/Fourth%20CCIC%20Meeting%20Report_FINAL.pdf.

¹⁶⁶ The current Programme of Work of the Carpathian Convention (2024-2026) lists activities by sectors and actors. See Annex 1, Decision COP 7/20 at http://www.carpathianconvention.org/wp-content/uploads/2024/09/CC_COP7_Programme-of-Work.pdf.

¹⁶⁷ The Carpathian Biodiversity Framework adopted with Decision COP 7/6 para 1 translates goals and targets of the Kunming Montreal Global Biodiversity Framework into policy actions for the Carpathian region. See http://www.carpathianconvention.org/cop7/docs/officialdocuments/CC%20COP7%20DOC7_Carpathian%20Biodiversity%20Framework_ADOPTED.pdf.

¹⁶⁸ However, the meeting reports almost always refer to the article/s of the Framework Convention in the title of the individual agenda items, but without reference to the individual paragraphs specifying the legal obligations. This is the case even where provisions already exist for the subject area in question in a Protocol that is in force.

¹⁶⁹ Examples can be found in the recommendations from the 12th CCIC meeting http://www.carpathianconvention.org/tl_files/carpathiancon/Downloads/03%20Meetings%20and%20Events/Implementation%20Committee/CCIC2021/12th%20CCIC%20RecommendationsFINAL1602.pdf and the 15th CCIC meeting at http://www.carpathianconvention.org/wp-content/uploads/2025/01/15th-CCIC-Recommendations_FINAL.pdf.



Sometimes challenges and gaps are identified more precisely, but even in these cases no reference is made to specific provisions of the Framework Convention or the Protocols¹⁷⁰. However, a suggestion to address another gap, namely the implementation of Article 3 of the Carpathian Convention referring to the integrated management plans¹⁷¹ was not pursued in any of the subsequent CCIC meetings.

It is also interesting to see how reports from NGOs about (alleged) violations of the Carpathian Convention are handled. In the case of information about plans to implement a large-scale ski resort project in the Ukrainian Svydovets Mountains, the CCIC noted the update on the case by the Free Svydovets Initiative Group and welcomed the proposal by Ukraine to send an official position in writing to the CCIC on behalf of the Ministry of Energy and Environmental Protection of Ukraine¹⁷². Due to a lack of records in the subsequent CCIC meeting reports and recommendations, it was not possible to determine whether such an official position had been presented and, if so, what the follow-up action might have been.

In the case of the planned construction of wind farms in various areas of the Ukrainian Carpathians the CCIC took note of the Report on “Violations of Environmental and Urban Planning Legislation of Ukraine During the Construction of Wind Farms on The High Altitudes of Mountain Ranges of the Ukrainian Carpathians” by the NGO Ecosphere and of the call to support protection of the Ukrainian Carpathians, its flora, fauna and natural landscapes from the risks of being significantly damaged, invited the Secretariat to continue its efforts in sharing relevant information with the Convention Parties partners and stakeholders, and invited Parties to consider it and to provide feedback, as they deem relevant¹⁷³.

In both cases, follow-up is not guaranteed because it depends on the willingness of the State concerned to comment on the allegations, respectively on the willingness of Contracting Parties to provide feedback if they consider it relevant.

This may also be one of the reasons why the Science for the Carpathians (S4C) network’s¹⁷⁴ key messages and recommendations for the CCIC, resulting from the Forum Carpaticum Conference 2025 suggested creating a Compliance mechanism and establishing a potential Working Group to this end¹⁷⁵. The CCIC subsequently welcomed the recommendations to the Carpathian Convention, invited the Parties to take the recommendations into close consideration; and requested the Secretariat to continue close collaboration with the S4C in this respect¹⁷⁶.

¹⁷⁰ The report of the 14th CCIC meeting includes a detailed list of the main challenges and gaps related to the topic of pastoralism, but this is not backed up by the corresponding legal obligations, even though there are regulations on this topic both in the Framework Convention (including Articles 7 paras 1 and 2 as well as 11) and in the Protocol on Sustainable Agriculture and Rural Development (Articles 1 para 3 d) and g), 9, 11 and 12). See the list at http://www.carpathianconvention.org/wp-content/uploads/2024/04/14-CCIC-meeting_MEETING-REPORT-July-2023.pdf.

¹⁷¹ See report of the 7th CCIC meeting, p. 6 at http://www.carpathianconvention.org/tl_files/carpathiancon/Downloads/03%20Meetings%20and%20Events/Implementation%20Committee/CCIC_Vienna2016/CCIC%20Meeting%20Report_FINAL.pdf.

¹⁷² See Final Meeting Report of the 10th CCIC meeting, p. 14 at http://www.carpathianconvention.org/tl_files/carpathiancon/Downloads/03%20Meetings%20and%20Events/Implementation%20Committee/CCIC_Budapest2019/10th%20CCIC%20Meeting%20report%20and%20Recommendations_FINALrev.pdf.

¹⁷³ See Final Recommendations of the 16th CCIC meeting, p. 9 at http://www.carpathianconvention.org/wp-content/uploads/2026/01/16th-CCIC-Recommendations_FINAL-CLEAN-VERSION.pdf.

¹⁷⁴ Science for the Carpathians (S4C) is an international research network launched in 2008 to connect scientists in Central Europe, define research priorities for the Carpathian region and enhance international collaboration with partners from outside the Carpathians. It serving as the scientific arm for the Carpathian Convention. For further information see <https://carpathianscience.uj.edu.pl/about-us>.

¹⁷⁵ See S4C key messages and recommendations for the 16th CCIC, p. 8 at http://www.carpathianconvention.org/wp-content/uploads/2025/11/S4C-Recommendations-2025-to-CCIC_by-COP7-Decisions.pdf.

¹⁷⁶ See 16th CCIC meeting recommendations, page 4 under the item Decision COP 7/8 Strengthening science-policy-practice interface and cooperation with scientific networks at http://www.carpathianconvention.org/wp-content/uploads/2026/01/16th-CCIC-Recommendations_FINAL-CLEAN-VERSION.pdf.



There were also other cases of suspected non-compliance with the Convention that were brought to the Secretariat's attention, such as the construction of a fence with barbed wire on the territory of the East Carpathian Biosphere Reserve along the border between Slovakia and Ukraine affecting the migration routes of large carnivores and other animals. The Secretariat drew the attention of the manager of the Interreg Central Europe project LECA - in the course of which the construction of the fence came to light - to the right of Observers to present any information or report on implementation of and compliance with the provisions of the Biodiversity Protocol to the COP and/or to the CCIC.

The description of the CCIC's approach shows that the analysis and assessment of information relevant to implementation, and thus the monitoring of compliance, are superficial and do not lead to substantial follow-up steps. The resulting recommendations of the CCIC for implementation and the necessary measures for compliance addressed to the COP are therefore also affected by these weaknesses. An example of this is the draft progress report for COP 7, which was discussed at the 14th CCIC meeting and reflects the recommendation of a meeting of the Working Group Sustainable Agriculture and Rural Development on pastoralism. Although the CCIC detected implementation gaps in this field, the recommendations remain very general¹⁷⁷, as they are limited to proposing to undertake relevant actions for supporting, promoting and protecting the traditional pastoral practices in the Carpathians and to highlight the relevance and contribution of the Carpathian region to this important practice at the international level¹⁷⁸.

4.1.3. The results of compliance monitoring

As a political decision-making body, the COP is the authority that draws conclusions from the monitoring of compliance by the CCIC. The COP is responsible for making the decisions necessary to promote the effective implementation of the Convention¹⁷⁹. The COP shall reach its decisions by consensus¹⁸⁰. The following functions of the COP in particular can be assigned to the area of monitoring compliance: It shall regularly review and support the implementation of the Convention and its Protocols¹⁸¹. Furthermore, it shall establish subsidiary bodies, including thematic Working Groups, as are deemed necessary for the implementation of the Convention, regularly review reports submitted by its subsidiary bodies and provide guidance to them¹⁸². Finally, it shall adopt or recommend measures to achieve the objectives laid down in Articles 2 to 13 of the Carpathian Convention¹⁸³. This is also reflected in the Protocols currently in force, according to which the COP shall make recommendations on any matters necessary for the implementation of the respective Protocol and establish such subsidiary bodies as are deemed necessary for the implementation of the respective Protocol¹⁸⁴.

¹⁷⁷ Given the comprehensive and detailed list provided by the Working Group Sustainable Agriculture and Rural Development regarding the gaps and challenges in the field of pastoralism, the CCIC could have addressed some of these gaps specifically, for example by recommending that the Contracting Parties consider providing targeted support to herders and shepherds or by recommending to consider developing a project supporting the various activities and aspects relevant for pastoralism.

¹⁷⁸ See draft progress report for COP 7, p. 19 available at <http://www.carpathianconvention.org/2023/06/14/14th-meeting-of-the-carpathian-convention-implementation-committee/>.

¹⁷⁹ See chapeau of art 14 para 2 Carpathian Convention. See also the section 'Powers of the Conference of the Parties' in the Handbook on the Carpathian Convention prepared by the Regional Environmental Centre for Central and Eastern Europe (REC) and the European Academy Bolzano (EURAC), 2007, pages 146 and 147.

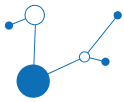
¹⁸⁰ See Art 14 para 6 Carpathian Convention.

¹⁸¹ See Art 14 para 2 (a) Carpathian Convention.

¹⁸² See Art 14 para 2 (e) Carpathian Convention. This provision could constitute the legal basis for establishing a Compliance Working Group or Committee and its Terms of Reference, if desired.

¹⁸³ See Art 14 para 2 (h) Carpathian Convention.

¹⁸⁴ See Art 25 para 6 (a) and (b) in conjunction with Art 25 para 1 Protocol on Conservation and Sustainable Use of Biological and Landscape Diversity, Art 22 para 6 (a) and (b) in conjunction with Art 22 para 1 Protocol on Sustainable Forest Management, Art 29 para 6 (a) and (b) in conjunction with Art 29 para 1 Protocol on Sustainable Tourism, Art 19 para 6 (a) and (b) in conjunction with Art 19 para 1 Protocol on Sustainable Transport and Art 21 para 6 (a) and (b) in conjunction with Art 21 para 1 Protocol on Sustainable Agriculture and Rural Development.



Given the approach of the CCIC described above and the fact that the CCIC prepares the decisions of the COP, it comes as no surprise that these decisions and recommendations, and thus the consequences drawn from the implementation deficiencies addressed, do not show any in-depth examination of the legal content of the obligations of the Contracting Parties under the Carpathian Convention and its Protocols. This should not detract from the rich and differentiated steering of implementation through COP decisions¹⁸⁵, but it does reveal shortcomings in terms of a fully-fledged monitoring of compliance with applicable provisions. The two decisions of the last COP on pastoralism, an area in which the CCIC had identified gaps in implementation¹⁸⁶, can set an example¹⁸⁷.

In summary, it should be noted that although the existing institutional regulations¹⁸⁸ contain specific tasks with regard to monitoring compliance, their implementation remains toothless because there is no real examination of whether and to what extent existing obligations under international law arising from the Framework Convention and the Protocols have been fulfilled. This could be remedied by developing a practical procedure for the legal analysis and assessment of the information about the implementation of the aforementioned obligations of the Contracting Parties and the resulting consequences¹⁸⁹.

4.2. Dispute settlement in the Carpathian Convention

In the Carpathian Convention the issue of dispute settlement is dealt with only very briefly and quite generic. The only existing provision foresees that the Parties shall settle disputes arising from the interpretation or implementation of the Convention by negotiation or any other means of dispute settlement in accordance with international law¹⁹⁰. The primary method for resolving disputes is through direct negotiation between the involved Parties. But they can also utilize other peaceful means of dispute settlement available under international law. This usually refers to mechanisms under Article 33 of the UN Charter, such as mediation, conciliation, arbitration or judicial settlement. However, no procedure for the utilization of any compulsory means of dispute settlement is established¹⁹¹. The existing provision is only a reference to individual instruments of conflict resolution.

¹⁸⁵ Decision COP 7/13 on sustainable forest management may serve as an example, as it defines not only tasks for the Convention Bodies and stakeholders but addresses also very specifically the development of the Inventory of Virgin Forests of the Carpathians, the adoption of the criteria and indicators for selection of quasi-virgin forests in the Carpathians, the development of the Assessment of climate change risks and adaptation options for the Carpathian forests and their ecosystem services, the organization of a special session and workshop on forest ecosystem vulnerabilities to climate change in the Carpathians, held during the 6th Forum Carpathicum, the development of the project proposal ForestConnect “Towards a Climate-smart Forest Connectivity for Large Carnivores in the Balkan-Carpathian Region” under the Interreg Danube Region Programme as well as the praise for a documentary film about close-to-nature forest management in the Carpathians.

¹⁸⁶ See footnote 177.

¹⁸⁷ Decision COP 7/12 para and Decision COP 7/12 para 3 lack legal substantiation apart from the general reference to Article 7 of the Carpathian Convention. See COP 7 decisions, p. 21

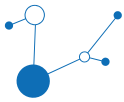
http://www.carpathianconvention.org/cop7/docs/officialdocuments/CC_COP7_DOC3_COP7%20DECISIONS_ADOPTED.pdf.

¹⁸⁸ Regulations governing the functions of the bodies of the Carpathian Convention in the Framework Convention and the Protocols, as well as in the Rules of Procedure of the COP and the CCIC and in the Terms of Reference of the Working Groups.

¹⁸⁹ The definition of mechanisms controlling the implementation of the Carpathian Convention has already been recommended as early as in 2007. See the section ‘Conclusions and Recommendations’ in “A Heightened Perspective. Regional Assessment of the Policy, Legislative and Institutional Frameworks Implementing the Carpathian Convention” prepared by the Regional Environmental Centre for Central and Eastern Europe (REC) and the European Academy Bolzano (EURAC), 2007, page 115.

¹⁹⁰ See Art 20 Carpathian Convention.

¹⁹¹ Gianfranco Tamburelli, ‘The Carpathian Convention’ in “Sustainable development and transboundary co-operation in mountain regions” -The Alpine and Carpathian Conventions”, Balázs Majtényi, Gianfranco Tamburelli eds., 2009, p. 134.



4.3. The components of the Carpathian Convention's compliance monitoring framework

Following up on the explanations in section 2.3, it can be summarised that the approach to monitoring compliance of the Carpathian Convention consists only of performance information, which itself hardly addresses the content of the legal obligations. There is neither a formal multilateral non-compliance procedure nor non-compliance responses. The fourth component, dispute settlement, is also very generic and has never been used to date.

From the consensus principle that applies in the Carpathian Convention, the rules for the bodies involved in monitoring compliance, and the provision on dispute settlement, which addresses negotiation as the first instrument of conflict resolution, it follows that the compliance monitoring framework of the Carpathian Convention is designed to facilitate better compliance of the Parties in a non-adversarial and non-punitive manner.

4.4. Strengths and weaknesses of the Carpathian Convention's compliance monitoring framework

4.4.1. Strengths

Important cornerstones for monitoring compliance and drawing conclusions from the results, such as the responsibilities of the bodies involved, the basic principles of a procedure and the inclusion of evaluating the effectiveness of implementation, are contained in the regulations governing the institutions of the Carpathian Convention¹⁹².

Public participation is recognised as an overarching principle to be applied throughout the implementation of the Carpathian Convention¹⁹³. The Parties are also required to guarantee public participation in decision-making as well as in the implementation of the Convention¹⁹⁴. Furthermore, public participation in the Carpathian Convention is operationalized through an open Observer system.

The Carpathian Convention can operate cost-effectively as there is only one working language, English¹⁹⁵.

4.4.2. Weaknesses

In many cases, the obligations arising from the Carpathian Convention and its Protocols are not clearly defined, making it difficult to assess compliance.

Existing reporting does not focus sufficiently on the legal content of the obligations, meaning that the information obtained does not allow compliance with the Convention's provisions to be reviewed. This also applies to the reporting tools currently in use.

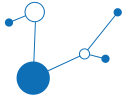
Analysis and assessment of the measures taken for implementation of the provisions of the Carpathian Convention and its Protocols are not designed as a systematic process.

¹⁹² Regulations governing the functions of the bodies of the Carpathian Convention in the Framework Convention and the Protocols, as well as in the Rules of Procedure of the COP and the CCIC and in the Terms of Reference of the WGs.

¹⁹³ See Art 2 para 2 (c) Carpathian Convention.

¹⁹⁴ See Art 13 para 2 Carpathian Convention.

¹⁹⁵ See Rule 36 para 1 of the Rules of Procedure for the Conference of the Parties to the Framework Convention on the Protection and Sustainable Development of the Carpathians.



The institutions responsible for monitoring compliance (CCIC, Working Groups, Secretariat) may lack dedicated resources or legal expertise to systematically analyse compliance with legal obligations. This applies also to the Observers whose institutional capacity for compliance monitoring is very often limited.

There is no substantive discussion of whether and to what extent existing obligations under international law arising from the Framework Convention and the Protocols have been fulfilled by the measures taken by the Contracting States.

The current processing of information relevant to implementation and thus the monitoring of compliance, does not lead to substantial follow-up steps. This is also reflected in generic recommendations of the CCIC and generic decisions of the COP.

The consensus principle of the Carpathian Convention prevents decisions from being made on the consequences of any non-compliance found against the State violating the Convention.

5. Recommendations for improving the monitoring of compliance with the provisions of the Carpathian Convention and its Protocols

5.1. Possible design of a compliance mechanism

The issue of improving compliance monitoring in the Carpathian Convention is highly topical. The S4C network recommended creating a compliance mechanism and establishing a potential Working Group to this end in a document which was discussed at the last meeting of the CCIC¹⁹⁶ in December 2025.

The issue is also relevant insofar as it fits with the basic orientation of the Central Mountains Project, which deals with strengthening governance models for sustainable development of mountain areas in Central Europe, focusing in particular on citizen involvement and participatory governance.

It is recognized that Parties to the MEAs are best situated to choose and determine useful approaches in the context of specific obligations contained in these Agreements¹⁹⁷. Therefore, this study only presents suggestions on how international cooperation could be structured to improve the compliance monitoring framework of the Carpathian Convention in such a way as to ensure that its provisions are implemented in accordance with the law. Sometimes options are presented with their respective advantages and disadvantages.

Assuming that the Carpathian Convention regime will benefit greatly from the experience of the Alpine Convention as a successful model for the protection and sustainable development of mountain regions¹⁹⁸, these suggestions are based on the experience gained during 23 years of implementing the Alpine Convention's compliance monitoring framework.

Since the Carpathian Convention does not provide for either a formal multilateral non-compliance procedure or non-compliance responses and since its performance information hardly addresses the content of the legal obligations, it is suggested that such a procedure be developed with a broad participation of interested stakeholders.

¹⁹⁶ See section 4.1.2.

¹⁹⁷ See recital 3 of the UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (Nairobi 2002).

¹⁹⁸ See indent 9 of the Preamble of the Framework Convention on the Protection and Sustainable Development of the Carpathians.



The following aspects could be relevant for the design of this procedure, referred to below as a 'compliance mechanism' in analogy to the Alpine Convention, without claiming to be exhaustive:

- Objectives of the compliance mechanism

The procedure should pursue the following three objectives:

- 1) Review of compliance with the provisions of the Carpathian Convention and its Protocols by the Contracting States and determination of the consequences of non-compliance,
- 2) Support to the Contracting States in the implementation of the provisions of the Carpathian Convention and its Protocols,
- 3) Development of proposals aiming at improving the implementation of the Convention and the Protocols, including the presentation of good practices to allow Parties to learn from each other.

- Review body

The CCIC has a series of functions relevant to compliance monitoring¹⁹⁹ and could be regarded as the review body. The work of reviewing the implementation of legal obligations is primarily a legal task that requires the involvement of legal experts. However, the complexity of reviewing implementation practices almost always requires broad expertise from many other fields of knowledge. This expertise should either be made available in the delegations of the States and Observers participating in the review body or obtained during the proceedings by consulting relevant experts. There are several options here:

- 1) The CCIC holds its own specific compliance monitoring meetings, at which the delegations of the Contracting States also include legal and other necessary experts.
- 2) A subsidiary body of the CCIC is created, consisting of government representatives bound by instructions. The composition of this body should reflect a professional and geographical balance.
- 3) A subsidiary body of the CCIC is created, composed by nationals of the Contracting Parties, who are serving in their personal capacity and are not bound by instructions (model of the Compliance Committee of the Aarhus Convention). Also, in this case a professional and geographical balance is desirable.

In all three options, the composition of the review body should also reflect appropriate representation of the Observers (NGOs and academia)²⁰⁰.

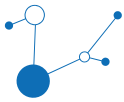
Advantage options 1) and 2): Governments are not giving up on possible outcomes of the review

Advantage option 3): Better acceptance by the civil society

The Secretariat, in its role of supporting the review body, should be reinforced in all three options by a legal expert to be able to manage the additional workload associated with monitoring compliance with the Convention.

¹⁹⁹ See section 4.1.2.

²⁰⁰ See also in this chapter the section "Initiation of the review", option 2



- Initiation of the review

Several options that can also coexist are possible.

- 1) Initiation through expiry of deadlines: Regular reporting by Contracting States; here, the timeliness of the information must be weighed against the effort required by the review body to prepare its report, which, in turn, depends on the scope of the review. The frequency of reporting by Contracting States should not be too short²⁰¹.
- 2) Initiation through direct referral to the review body by States and Observers: Introducing the possibility for Observers to have alleged non-compliance reviewed would be in line with public participation as an overarching principle to be applied throughout the implementation of the Carpathian Convention. For reasons of procedural economy, it should be considered whether participation in the meetings of the review body should be open to all interested environmental organisations recognised in the State Party concerned, or whether it should be restricted to the Observer submitting the request for review and to Carpathian-wide NGOs, such as representatives of the S4C network. What matters is a transparent selection process for participating NGOs. Furthermore, it could be useful to develop a procedural guide and a standardised form for such a request which could be made available on the website of the Carpathian Convention²⁰².
- 3) Review body's own initiative to address shortcomings in the implementation. In this case, care must be taken to ensure that relevant information be submitted by the Contracting States. Of course, Observers can add to this information.

The compliance mechanism recommended should in any case also provide for option 2. Granting the Observers the possibility of initiating a procedure for reviewing an alleged non-compliance can act as an incentive for the Contracting States to behave in accordance with the Convention.

The exhaustion of national remedies should not be a prerequisite for the processing of a direct referral, or a procedure initiated at the initiative of the review body. This is meant to prevent irreparable damage.

- Reporting by the Contracting States

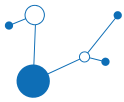
In the case of the procedure based on regular reporting by the Contracting States, it should be considered whether the Framework Convention and all Protocols should always be reviewed at once, or, for reasons of work efficiency, whether the Protocols should be reviewed in pairs that are related in terms of subject matter, e.g. Sustainable Agriculture and Rural Development and Sustainable Forest Management. In this latter case the Framework Convention could be reviewed only every second turn.

An emphasis in reporting on obligations that need to be fulfilled jointly could demonstrate the added value of Carpathian Convention. This would have the advantage of saving work and costs but carries the risk of creating a hierarchy of obligations that are, in fact, on the same level. The same applies to focusing on the compulsory provisions of the Protocols.

The tools for reporting by States could directly address the implementation of obligations and link to the monitoring of effectiveness of the relevant provisions. Furthermore, consideration should be given to whether the public should be involved in the drafting of national reports, for example in the form of small interdisciplinary S4C groups.

²⁰¹ A reporting interval of four years proved to be far too short for a review of the entire legal framework of the Alpine Convention and its Protocols in view of the duration of the procedure, see footnote 67.

²⁰² The European Commission provides a form on its website for the public to submit complaints about alleged violations of EU law. See the submission criteria and the form at <https://ec.europa.eu/law/application-eu-law/report-breach/en/online-form>.



A compliance mechanism could initially be tested with the Framework Convention and the Biodiversity Protocol, which is the oldest Protocol and has a relevant Strategic Action Plan. After this test run the mechanism could then be adapted.

- Compliance with deadlines for reporting and requested feedback

Timely reporting and providing feedback by the Parties is crucial for efficient work planning by all involved and thus for meeting the deadlines of any mechanism. Incentivizing timely reporting requires reducing the administrative burden on Parties through e.g. standardized, user-friendly reporting templates and decreasing the frequency of reports or adopting modular reporting (reporting only on updates rather than requesting full reports every cycle). However, this should not be at the expense of the accuracy of reporting and the informative value of the information provided.

- Decision making

The introduction of decisions taken by majority vote as a last-resort instrument designed to ensure compliance when consensus cannot be reached is worth considering, because the mere existence of this possibility could prevent potential blockades by individual states resisting findings of non-compliance.

- Contents of the report by the review body

Apart from the implementation measures and the findings made also regarding their effectiveness, the review body's report should also include good implementation practices. Uniform criteria for these, such as innovation potential, multiplier effect, transferability and good governance including public participation, could be developed. This would enable Contracting Parties to learn from recognised good practices and to strengthen the Convention's impact.

- Consequences of the compliance review

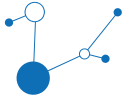
In case the review body's report identifies compliance difficulties, recommendations to improve the implementation of the provisions of the Convention and its Protocols should be elaborated for adoption by the COP.

These recommendations should focus on incentives, specifically on enhanced international cooperation regarding assistance in responding to non-compliance. This could include advice on compliance issues, providing relevant experts, support in developing a compliance strategy, technical assistance such as capacity building in the form of training and workshops, technology transfer and exchange of information as well as financial assistance to provide funding for relevant projects.

Disincentives such as requesting to develop a programme of implementation actions or demanding a timetable for compliance should only be considered for very serious issues and as a measure of last resort.

When selecting consequences, care must be taken to ensure that only measures are considered which facilitate better compliance in a non-adversarial, non-discriminating and consultative manner.

The review body's report and the recommendations adopted by the COP should be made available to the public.



5.2. Implementation of the suggestions made in this analysis

To address some of the weaknesses of the current Carpathian Convention's compliance monitoring framework the CCIC could, in the short term, phrase its recommendations on the implementation of the Convention and the Protocols more clearly to set out concrete courses of action, if the available material allows for it. This would then be reflected in the relevant COP decisions. Furthermore, the CCIC could, where appropriate, refer more directly to the Protocols to raise awareness of the legal substance of their provisions.

To establish a compliance review process in the medium term the following institutional steps are conceivable:

- 1) Discussion of the issue of monitoring compliance under the Carpathian Convention within the CCIC with the involvement of interested Observers, based on an analysis of the weaknesses of the current compliance monitoring framework and the possibilities for addressing these weaknesses.
- 2) Informed decision by the CCIC recommending the establishment of a Working Group to draw up a compliance procedure, incorporating the key points on which a consensus was reached during the discussion.
- 3) Decision by the COP to initiate the development of a compliance procedure by establishing a Working Group to elaborate a corresponding mechanism in accordance with Art. 14 para 2 (e) of the Carpathian Convention.

5.3. Benefits of a compliance mechanism for the Parties to the Carpathian Convention

Developing a formal multilateral non-compliance procedure with non-compliance responses offers several advantages for the Parties:

- A mechanism facilitating better compliance in a non-adversarial, non-discriminating and consultative manner fosters a supportive environment that enhances the overall effectiveness of the Convention.
- A compliance mechanism can provide important contributions to a consistent interpretation of the provisions of the Convention and the Protocols, which is a significant aid to the application of these provisions by the administrations in concrete cases and helps to prevent regional fragmentation.
- A compliance mechanism facilitates solving problems, avoiding the stigma of disputes while encouraging and promoting a credible implementation of the Convention.
- A compliance mechanism serves as an "early warning" system for potential compliance issues, helping to prevent the emergence of formal disputes and minimizing environmental damage.
- A compliance mechanism based on multilateralism is well suited to protecting common, shared interests among the Parties. Cross border issues and topics of transnational importance can be better addressed.
- A compliance mechanism helps reducing potential international reputational risks and brings the Carpathian Convention up to the usual standard for Multilateral Environmental Agreements.