

Monitoring Compliance in the Alpine and Carpathian Conventions

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General considerations 1

Monitoring of compliance and enforcement in international environmental law

- Principle of equality among the subjects of international law applies.
- No superior authority can monitor compliance with the law and enforce it without the consent of the subject concerned.
- In international environmental law reciprocity often does not encourage legally compliant behavior.
- Application of procedural instruments creating pressure into behaving in conformity with the law („name, blame and shame“).

General considerations 2

- Compliance is the actual performance of a behaviour required by a norm.
- Compliance needs to be distinguished from implementation.
- Parties to an International Agreement must fulfil their obligations in good faith.
- Components of compliance monitoring frameworks:
 - Performance review information
 - Multilateral non-compliance procedures
 - Non-compliance response measures
 - Dispute settlement procedures



The Alpine Convention

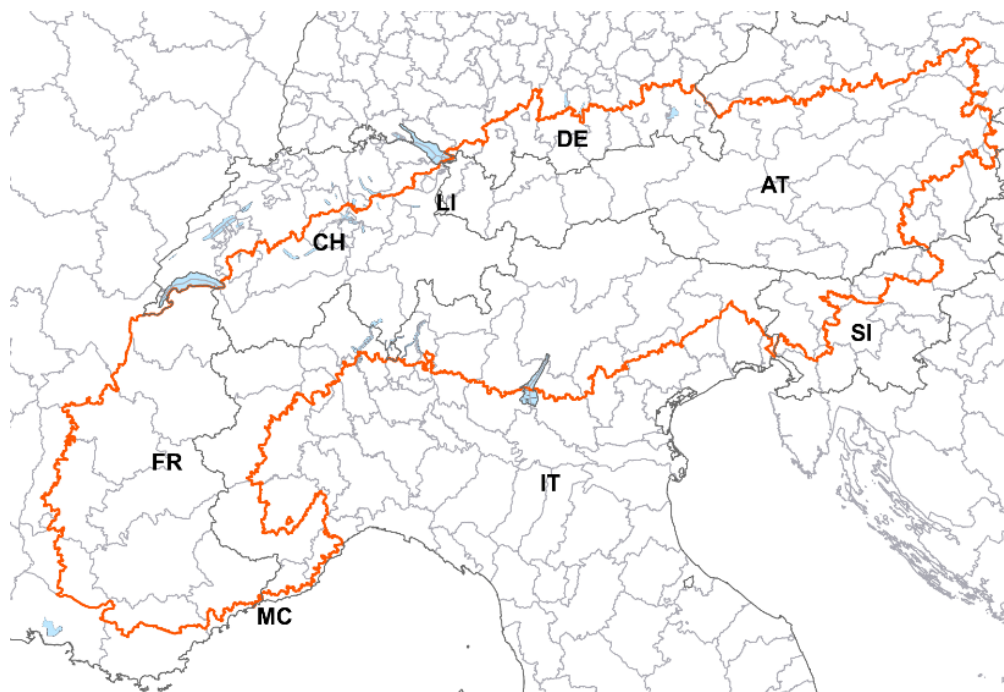
A pioneer of its kind: The first international treaty worldwide covering an entire mountain range that crosses several national borders.

Objective: Protect and sustainably develop the Alps and their unique natural and cultural heritage – now and for the future.

35 years of experience:



The Alpine Convention was signed in 1991.



Contracting Parties:

-  Austria
-  France
-  Germany
-  Italy
-  Liechtenstein
-  Monaco
-  Slovenia
-  Switzerland
-  European Union

Alpine Convention - Compliance Committee Functions

- Reviews compliance with the Alpine Convention and its Protocols by the Contracting Parties
- Supports the Contracting Parties, upon their request, in complying with the Convention and its Protocols
- Follows up on the requests for reviewing alleged non-compliance with the Convention and its Protocols submitted by the Contracting Parties and Observers
- Generates regular reports on the state of compliance with the Convention and its Protocols along with proposals of resolutions and recommendations
- Proposes measures for improvement of compliance with the Convention and its Protocols

Alpine Convention - Compliance Committee Composition

- 2 representatives maximum of every Contracting Party of the Alpine Convention
- 2 representatives maximum of the Observers present in the Permanent Committee
- If necessary, experts can be invited
- Support by the Permanent Secretariat



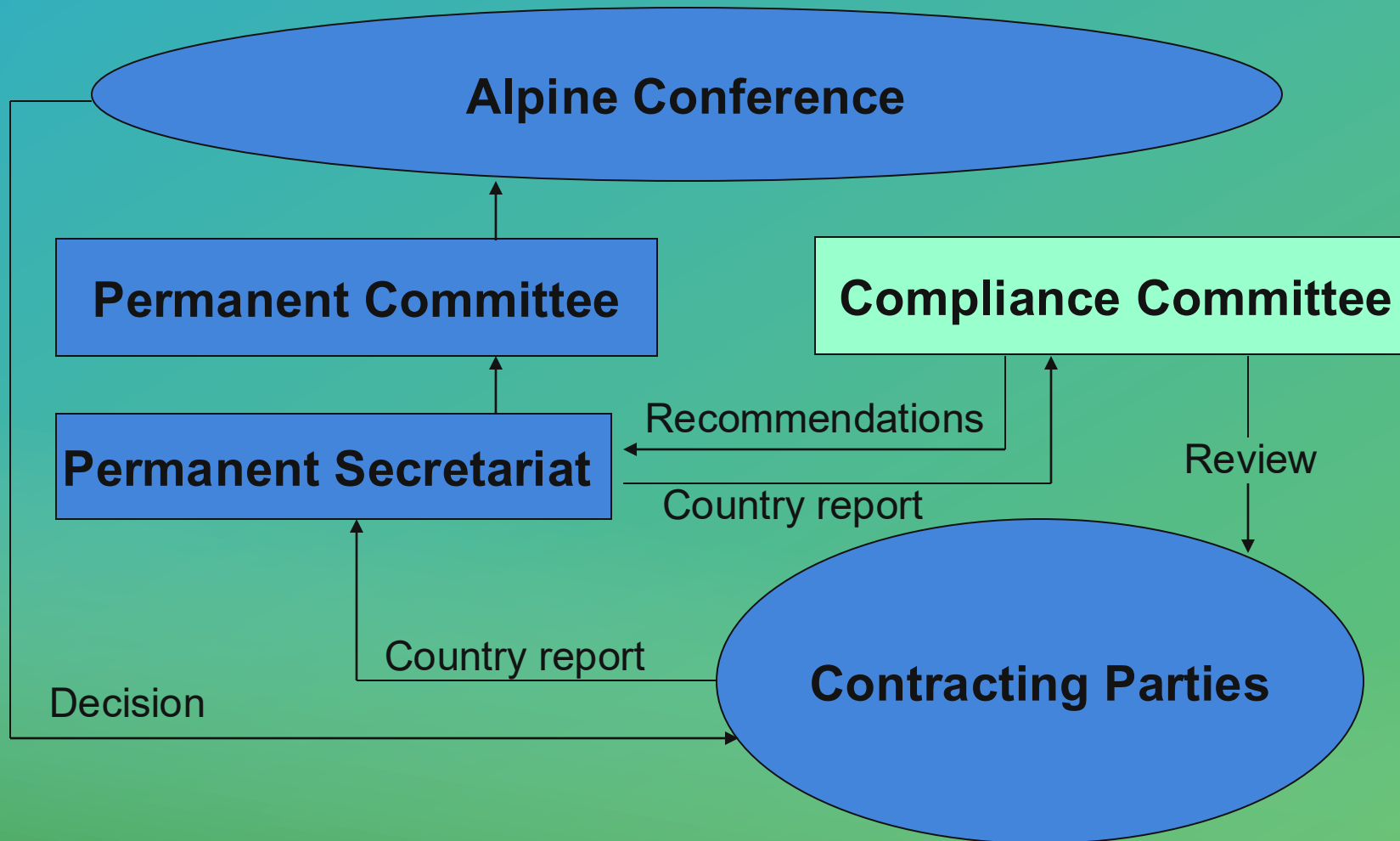
Alpine Convention - Compliance Mechanism

Two procedures

- **ORDINARY PROCEDURE**
 - Phase 1 – Ordinary procedure
 - Regular reports of the Contracting Parties
(mandatory reporting)
 - Phase 2 – In-depth-review
 - Choice of subjects based on the evaluation of the reports
of the Contracting Parties
- **EXTRAORDINARY PROCEDURE**
 - Requests from civil society (observer organisations)
 - Requests from Contracting Parties

Alpine Convention

Ordinary compliance procedure



Alpine Convention - Compliance Committee Modus operandi

- All 4 languages of the Alpine Convention are official languages for negotiation
- General rule: consensus, in case of need 3/4 majority
- Only the Contracting Parties of the respective Protocol are entitled to vote
- Participation rights of the Contracting Party affected
- Confidentiality of meetings and information
- Publication of the national reports and of the CC reports including the recommendations after adoption by the Alpine Conference



A pair of tortoiseshell glasses with dark frames and light-colored lenses is resting on an open book. The book has yellowed pages and some text is visible, though it is out of focus. The background is a solid light blue color.

Alpine Convention - Compliance Committee Sources of information

- Information provided by the Contracting Parties
- Any other source of information, such as
 - Reports on the State of the Alps
 - Other reports, surveys and opinions drawn up by Thematic Working Bodies
 - Project results
- Best practices of Contracting Parties
- Consultation of and discussion with external experts

Alpine Convention – Compliance Committee Outcomes

Recommendations by the Alpine Conference

- Advice and support regarding compliance issues
- Support in developing a compliance strategy
- Enquiries on-the-spot, with consent of the Contracting Party concerned
- Measures supporting cooperation
- Call for a compliance schedule
- Presentation of best practices
- Other suitable non-confrontational, non-judiciary, non-discriminating and consultative measures



Alpine Convention - In-depth review

Previous topics

- **Tourism**

Recommendations related to the implementation of Artt. 5(1), 5(2), 6(1), 6(2), 6(3), 6(4) and 18 Tourism Protocol and 12(1) Transport Protocol

- **Parsimonious use of soil**

Recommendations and interpretation elements related to the implementation of Artt. 9(3) a, e and f Spatial Planning Protocol and 7(2) Soil Protection Protocol

- **Conservation of wetlands and moors**

Recommendations and interpretation elements related to the implementation of Art. 9 Soil Protection Protocol

Alpine Convention - Extraordinary procedure

Previous topics

- **Wind farm Sattelberg**
Art. 2(4) Energy Protocol
- **Cable car Piz Val Gronda**
Art. 6(3) Tourism Protocol
- **Protected landscape „Egartenlandschaft“**
Art. 11(1) Nature Protection Protocol
- **Deployment of renewable energy**
Artt. 2(2) and 6(1) Energy Protocol and
Artt. 7 and 9 Soil Protection Protocol



Alpine Convention - Compliance Mechanism Strengths

- Points out deficiencies and difficulties of complying with the provisions of the Alpine Convention and its Protocols and highlights also good practices
- **Helps to raise awareness of the legal obligations** under the Alpine Convention and its Protocols among national authorities and courts, in particular local and regional authorities.
- Carries out important work for the **substantiation** of the Alpine Convention's interpretation
- Not an instrument of accusation or prevention of measures but rather an **instrument of facilitation of compliant implementation** of the Convention's provisions

Alpine Convention - Compliance Mechanism

Critical issues

- Large quantity of material to be processed
- Frequent failure by Contracting Parties to meet the specified deadlines and the applicable language regime
- Difficulties by Contracting Parties in answering the questions asked result in difficulties to assess the compliant implementation of the provisions.
- Information on effectiveness of measures taken is often missing.
- “Best practices” are partially arbitrary.
- Review of the Declaration on Population and Culture is contrary to the system.



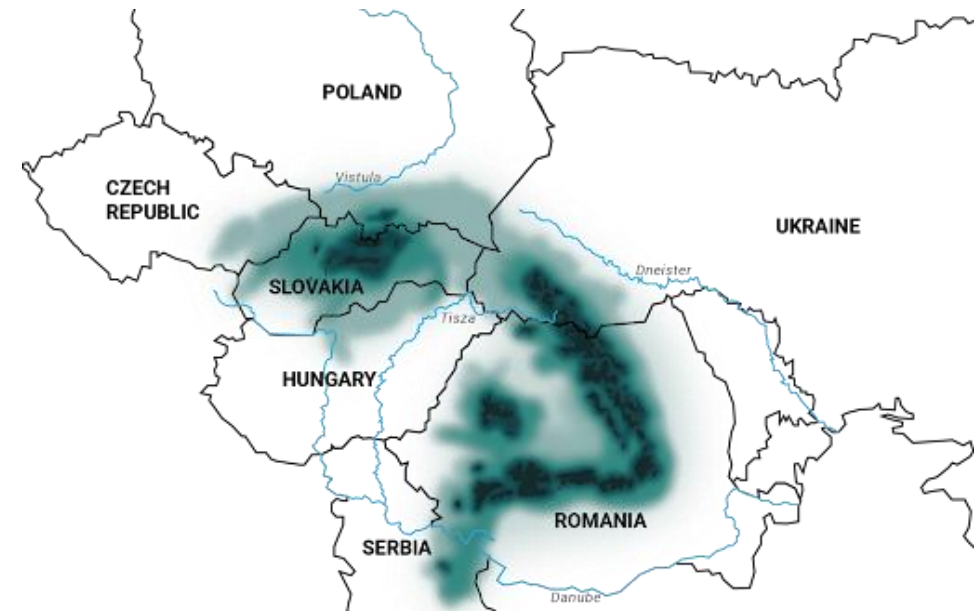
The Carpathian Convention

Characteristics: The only multi-level governance mechanism and legally binding international framework that covers the entire Carpathian region and the second sub-regional treaty-based regime covering an entire mountain region worldwide.

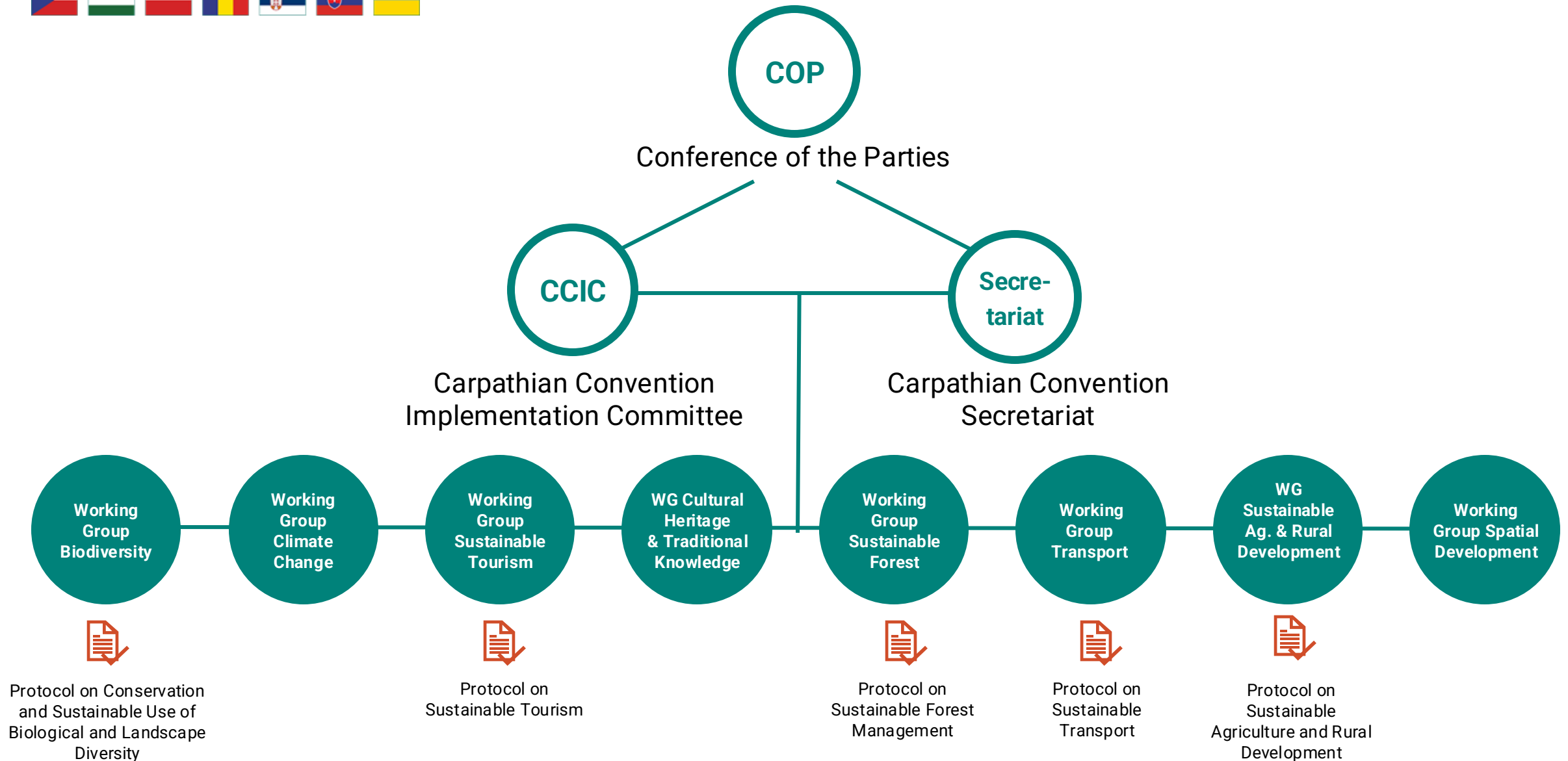
Objective: Protect and sustainably develop the Carpathians and their unique natural and cultural heritage – now and for the future.

Contracting Parties: Czech Republic, Hungary, Poland, Romania, Serbia, Slovakia and Ukraine

Signed in 2003,
Ratified by all 7 Parties in 2006



Key points of compliance monitoring



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Carpathian Convention - Sources of information on implementation

- Reporting by the Contracting Parties
- Reporting by the Secretariat
- Reporting by the Working Groups
- Reporting by the Observers



CCIC as hub for compliance monitoring

- The CCIC is responsible for collecting, assessing and analysing information on the **implementation** of the Carpathian Convention and its Protocols, as well as **for monitoring** the Contracting Parties' **compliance**.
- Despite various and extensive information on implementation instruments there is **no substantive discussion of the fulfilment of the legal obligations** of the Contracting States under the Carpathian Convention and its Protocols.
- **Analysis and assessment of information relevant to implementation** are not designed as a **systematic process**.
- The **monitoring of compliance** does not lead to **substantial follow-up steps**. This applies also to reports from NGOs about alleged violations of the Carpathian Convention.
- The resulting **recommendations of the CCIC** for implementation and the necessary measures for compliance addressed to the COP are hence also **affected by these weaknesses**.

Carpathian Convention – Results of compliance monitoring

Decisions and Recommendations by the COP comprehensively steer implementation but there is **no real examination of whether and to what extent existing obligations** arising from the Framework Convention and the Protocols **have been fulfilled**.



Alpine and Carpathian Conventions – Components of compliance monitoring

Components of compliance monitoring	Alpine Convention	Carpathian Convention
Performance information	✓	✓
Multilateral non-compliance procedure	✓	-
Non-compliance response measures	✓	-
Dispute settlement procedure	✓	✓

Carpathian Convention – compliance monitoring

Conclusions and recommendations

It is suggested to develop a multilateral non-compliance procedure including non-compliance responses.

Relevant aspects of this procedure include, among others the **review body** and its **composition**, the **initiation of the review**, **decision making** and the **consequences** of the compliance review.

Establishing a **multilateral compliance mechanism** would be **highly beneficial** to the Contracting Parties of the Carpathian Convention.

Thank you for your attention!

