

UN Watercourses Convention

User's Guide Fact Sheet Series: Number 6

Notification Process for Planned Measures

The process for planned measures

The UN Watercourses Convention provides quite detailed provisions related to the notification of planned measures. **Whilst “planned measures” are not defined by the Convention, it is generally taken to mean any intended projects or programme which may cause some form of adverse effect(s) on a watercourse, either directly or indirectly, and in-turn within the territory of another watercourse State.**

Regarding notification, Article 12 stipulates that “before a watercourse implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified State to evaluate the possible effects of the planned measures”.

Consultation and negotiation

Notification essentially triggers a process of consultation and potentially negotiation. **Once a State has been notified of a planned measure, the notified State has six months to evaluate the data and information.** This period can be extended for a further six months where necessary. The notifying State agrees not to go ahead with the planned measure during that six month period. **Within that period the notified State must reply to the notifying State stating whether they find the planned measure to be consistent with the obligations under the Convention.** If States cannot agree on this point, they should enter into further consultation and negotiation, pursuant to the dispute settlement mechanisms set out in **Article 33 of the Convention.**

UN WATERCOURSES CONVENTION TEXT

ART. 11 - Information concerning planned measures

Watercourse States shall exchange information and consult each other and, if necessary, negotiate on the possible effects of planned measures on the condition of an international watercourse.

ART. 12 - Notification concerning planned measures with possible adverse effects

Before a watercourse State implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.

ART. 13 - Period for reply to notification

Unless otherwise agreed:

- a) A watercourse State providing a notification under article 12 shall allow the notified States a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate the findings to it;
- b) This period shall, at the request of a notified State for which the evaluation of the planned measures poses special difficulty, be extended for a period of six months.

ART. 14 - Obligations of the notifying State during the period for reply

During the period referred to in article 13, the notifying State:

- a) Shall cooperate with the notified States by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation; and
- b) Shall not implement or permit the implementation of the planned measures without the consent of the notified States.

ART. 15 - Reply to notification

The notified States shall communicate their findings to the notifying State as early as possible within the period applicable pursuant to article 13. If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, it shall attach to its finding a documented explanation setting forth the reasons for the finding.

ART. 16 - Absence of reply to notification

1. If, within the period applicable pursuant to article 13, the notifying State receives no communication under article 15, it may, subject to its obligations under articles 5 and 7, proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.
2. Any claim to compensation by a notified State which has failed to reply within the period applicable pursuant to article 13 may be offset by the costs incurred by the notifying State for action undertaken after the expiration of the time for a reply which would not have been undertaken if the notified



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Is an Environmental Impact Assessment (EIA) required?

Transboundary EIA is generally seen as an important part of the notification and assessment process for planned measures. However, **there is no explicit requirement to conduct EIAs under the Convention.** Nevertheless, based on the **Article 7** duty to take appropriate measures not to cause significant harm and **Article 12** on notification concerning planned measures with possible adverse effects, **one could argue that conducting an EIA is necessary to effectively implement the more general requirements of the UNWC.**

Additionally, the International Court of Justice (ICJ) in the ***Pulp Mills on the River Uruguay*** case affirmed that **EIA is an element of the due diligence requirement not to cause significant harm (see Fact Sheet #5).** However the practical components within an EIA were not defined by the ICJ so this is left up to States to determine.

ADDITIONAL RESOURCES

FURTHER READING

Rieu-Clarke, A., Moynihan, R. and Magsig, B., *UN Watercourses Convention – User's Guide* (CWLPS 2012), at 135-163

RELATED UN WATERCOURSES CONVENTION SECTIONS

Art 5 – Equitable and reasonable utilization and participation

Art 6 – Factors relevant to equitable and reasonable utilization

Art 33 – Settlement of disputes

UN WATERCOURSES CONVENTION TEXT

ART. 17 - Consultations and negotiations concerning planned measures

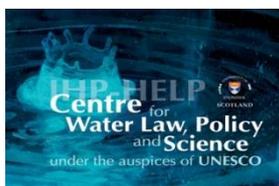
1. If a communication is made under article 15 that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, the notifying State and the State making the communication shall enter into consultations and, if necessary, negotiations with a view to arriving at an equitable resolution of the situation.
2. The consultations and negotiations shall be conducted on the basis that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other State.
3. During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period of six months unless otherwise agreed.

ART. 18 - Procedures in the absence of notification

1. If a watercourse State has reasonable grounds to believe that another watercourse State is planning measures that may have a significant adverse effect upon it, the former State may request the latter to apply the provisions of article 12. The request shall be accompanied by a documented explanation setting forth its grounds.
2. In the event that the State planning the measures nevertheless finds that it is not under an obligation to provide a notification under article 12, it shall so inform the other State, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner indicated in paragraphs 1 and 2 of article 17.
3. During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or permitting the implementation of those measures for a period of six months unless otherwise agreed.

ART. 19 - Urgent implementation of planned measures

1. In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning the measures may, subject to articles 5 and 7, immediately proceed to implementation, notwithstanding the provisions of article 14 and paragraph 3 of article 17.
2. In such case, a formal declaration of the urgency of the measures shall be communicated without delay to the other watercourse States referred to in article 12 together with the relevant data and information.
3. The State planning the measures shall, at the request of any of the States referred to in paragraph 2, promptly enter into consultations and negotiations with it in the manner indicated in paragraphs 1 and 2 of article 17.



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