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COMMITTEE ON ENVIRONMENTAL POLICY

**Working Group for the preparation
of a draft convention on access
to environmental information and
public participation in
environmental decision-making**

REPORT OF THE SECOND SESSION

1. The second session of the Working Group for the preparation of a draft convention on access to environmental information and public participation in environmental decision-making took place in Geneva from 30 October to 1 November 1996.
2. The meeting was attended by delegations of: Albania; Austria; Belgium; Bulgaria; Canada; Croatia; Czech Republic; Denmark; Finland; France; Georgia; Germany; Hungary; Ireland; Italy; Latvia; Lithuania; Netherlands; Norway; Poland; Portugal; Russian Federation; Slovenia; Spain; Sweden; Switzerland; Ukraine; United Kingdom.
3. The session was attended by representatives of the Commission of the European Communities.
4. Representatives of the United Nations Environment Programme (UNEP), and the World Health Organization's Regional Office for Europe (WHO/EURO) also attended.
5. The following non-governmental organizations were represented: Environmental NGOs Coalition; GLOBE Europe Network; International Chamber of Commerce (ICC); International Council of Environmental Law (ICEL); Regional Environmental Center for Central and Eastern Europe (REC); World Conservation Union (IUCN); and World Wide Fund for Nature (International)(WWF).
6. The Working Group adopted the agenda as contained in document CEP/AC.3/3.

7. The Working Group was informed of the discussions held at the informal meeting which was convened on 29 October 1996. The Working Group recalled that at its first session it had considered the draft elements for the convention as included in document CEP/AC.3/R.1 to be a useful basis for the preparation of the convention (CEP/AC.3/2, para. 9) and had found the structure set out in document CEP/AC.3/R.1 generally acceptable (CEP/AC.3/2, para. 10).

8. In addition to the draft elements for the convention as included in document CEP/AC.3/R.1, the Working Group had before it documents CEP/AC.3/R.2 and addenda 1 to 5, which included the comments on the draft elements by the delegations of Austria, Belgium, Germany, Lithuania, Ukraine and Uzbekistan. The delegations of Belgium, the Czech Republic and Poland circulated additional written comments. A publication on public participation prepared by a non-governmental organization from the Russian Federation, the report of the pan-European Environmental Citizens Organizations Conference on public participation, a provisional reference list of international environmental arrangements with possible links to the convention prepared by the secretariat, two WWF publications on "Environmental Reporting to Protect the Marine Environment: A North Sea Case Study" and on "A Benchmark for reporting on Chemicals at Industrial Facilities" and the OECD Council Recommendation on implementing pollutant release and transfer registers and other relevant information were also made available to the Working Group.

9. The delegation of Belgium introduced an explanatory note on the recognition of the human right to a healthy environment in support of its proposal as included in annex I to the report of the first session of the Working Group (CEP/AC.3/2). In the introduction specific reference was made to relevant developments at global and regional levels. Most delegations taking part in the ensuing discussion commended the delegation of Belgium for the work done and expressed their support for the proposal as submitted at the first session. Some delegations reserved their position in this regard. Other delegations opposed the Belgian proposal. The delegations that supported it held that this right as formulated in the proposal was a rule of conduct which meant that the Contracting Parties would have no further obligations than those laid down in the convention and would not be required to adopt specific provisions in domestic law recognizing this right as such. The Working Group decided to come back to this issue at a later stage in the light of possible future developments.

10. The Working Group commended the secretariat for the preparation of the provisional reference list of international environmental arrangements with possible links to the convention and requested the secretariat, with interested delegations, to update this list in the light of comments received and include the text of relevant provisions of these international arrangements, for its information at its third session.

11. The Working Group considered in a first reading articles 4, 5, 6 and 7. Delegations taking part in the discussion provided comments without prejudice to their positions in the future (see annex I below).

12. The Working Group was pleased to note that, thanks to the generous support from the Government of the Netherlands, many representatives from central and east European countries were present at the second session. The Working Group

recalled that the third session would take place from 11 to 13 December 1996 at the Palais des Nations in Geneva.

13. The Working Group agreed to nominate up to three vice-chairpersons at its third session and delegations were encouraged to undertake consultations in this respect.

14. The Working Group decided that an informal meeting would be convened on 9 and 10 December 1996 to continue drafting specific articles in the light of the discussions held. The outcome of the informal meeting would be considered at the third session of the Working Group.

15. The Working Group was informed of details regarding article 13 of the draft elements for the convention as included in CEP/AC.3/R.1, and it requested the secretariat to prepare a draft text which would also allow non-ECE member countries to become a Party to this Convention, for consideration at a later stage. Some financial implications were also mentioned. The view was expressed that the institutions of the European Communities should be subject to the convention and should negotiate in that respect in their own right. The position of the European Communities was currently under consideration.

16. Since the Working Group had undertaken a first reading of the substantial articles, it was decided to consider in detail specific provisions. During the informal meeting one group would consider and present options with regard to the definition of "environmental decision-making" and Article 5. It was suggested that this would have to cover two types of procedures, e.g. licensing or permitting procedures as well as policy-making procedures. In this context it was also suggested that an annex should be added to the convention with decisions and activities within the scope of the Convention. It was also suggested that the policy-making procedures could include law-making processes, monitoring and enforcement procedures and international decision-making. It was proposed to change this definition to "environmental decision" since the start of a specific environmental decision-making procedure was unclear. The Working Group was reminded that if a new definition of "environmental decision-making" was introduced, the corresponding article on public participation would also have to be revised. During the informal meeting a second group was expected to present options with regard to the definition of "environmental decision-making" and articles 3 and 4. The meeting was informed of the schedule of meetings of the Working Group for 1997 (see annex II below).

17. The Working Group adopted its report on Friday, 1 November 1996.

Annex I

PROVISIONAL COMMENTS ON ARTICLES 4, 5, 6 AND 7 AS INCLUDED
IN DOCUMENT CEP/AC.3/R.1, DRAFT ELEMENTS FOR THE CONVENTION
ON ACCESS TO ENVIRONMENTAL INFORMATION AND PUBLIC PARTICIPATION
IN ENVIRONMENTAL DECISION-MAKING

Article 4

In the general discussion on this article it was noted that the community's right to know should be one of the most important parts of this convention. In this respect reference was made to pollutant release and transfer registers and to relevant EC Directives. It was also suggested that a clear statement should be included on the duty of the authorities to inform the public in particular on emergencies and health issues. Some delegations indicated that this article was intended to supplement article 3 and should therefore be flexible.

Paragraph 1

It was suggested that "regularly" should be replaced by "continuously", and "mandatory" deleted.

Paragraph 2

Some delegations indicated that this paragraph should be flexible and not go into too much detail. It was suggested that "shall include" should be replaced by "may include". Other delegations pointed to the difficulties that could be encountered in the implementation, and requested further clarification of the terms "public registers" and "designation of officers".

Paragraph 3

In the discussion on the time-frame, it was suggested that this time-frame should be replaced by "annually" or "two years" or "four years". It was also suggested that the Convention should provide more details on what a report on the state of the environment should contain.

Paragraph 4

It was suggested that this paragraph should be included in Article 2 on general provisions, that the documents mentioned in it should be made available on the Internet and that Parties should not only publicize the availability of these documents but also make them available directly. It was suggested that "draft texts of international legal instruments" and "texts and draft texts of national legal instruments" should be added. Some delegations said that the list should be an open list of documents.

Paragraph 5

It was suggested that a public right to initiate a non-compliance procedure should be provided for. It was also stated that access to non-compliance provisions should be decided case by case.

Paragraph 6

Some delegations suggested strengthening this paragraph by replacing "encourage" by "require". Others were of the opinion that the term "entities" would require further clarification. In relation to the term "significant adverse", it was suggested that reference should be made to relevant international agreements.

Paragraph 7

It was suggested that "encourage" should be replaced by "require" and that voluntary agreements should be mentioned in this paragraph.

Article 5

It was pointed out that the definition of "environmental decision-making" as included in article 1 would have to be adapted to better reflect how public participation could take place and differentiate between licensing procedures and procedures for the drawing-up of policies or laws. In this respect it was noted that the definition should also include international decision-making processes. Several delegations expressed their support for the principle of public participation being laid down in this convention. It was also proposed to make this article flexible.

Paragraph 1

Some delegations expressed their doubts about the wording "without having to prove an interest" and indicated that there was possible duplication and/or overlap with other paragraphs of this article.

Paragraph 2

It was noted that the notification should be transmitted as early as possible and anyway in time for the public to comment before the final decision was taken. The wording of "available information" and "possible decision" would need further clarification.

Paragraph 3

It was held that this paragraph should include a minimum time-frame between the notification and the possibility of commenting, for example of sixty days. It was suggested that the second sentence should form a separate paragraph and that details should be provided on how the provision of additional assistance and information would have to be implemented. The issue of financial implications was also brought up.

Paragraph 4

It was suggested that the word "actively" should be deleted and also that this paragraph should be merged with paragraph two or deleted completely.

Paragraph 5

It was pointed out that the wording of this paragraph was similar to that of ECE Conventions and EC Directives. It was proposed to combine this paragraph with paragraph 3.

Paragraph 6

Some delegations held that the wording of this paragraph was confusing and unclear and would require further work.

Paragraph 7

Some delegations felt that the provisions in subparagraphs (a) to (h) should not have to be complied with in all cases. In this respect it was recalled that this paragraph would have to be reconsidered once a new definition of "environmental decision-making" had been prepared.

Paragraph 8

Some delegations suggested deleting the second sentence from this paragraph, while others reserved their position in this regard. It was also suggested that this paragraph should reflect how a reasoned decision should reach the public and that the decision should be documented and made available for public inspection.

Paragraph 9

The link between this paragraph and article 6 was underlined. Some delegations indicated that the public would have to prove an interest and that this paragraph was to set out remedies if public participation procedures were not properly applied. Other delegations held that the possibility to appeal against decisions could be considered as a separate matter and should therefore be included in a separate paragraph. The wording of this paragraph would have to be further considered.

Paragraph 10

It was suggested that this paragraph should be deleted or included in the preamble.

Paragraph 11

Some delegations were of the opinion that this paragraph was formulated in a general way and could therefore best be included in the preamble. Other delegations considered this paragraph to be highly important and held that it should therefore remain in the main body of the convention. The term "obstacles" was considered unclear and would therefore have to be considered at a later stage. In this respect references to the Universal Declaration of Human Rights were made.

Article 6

In the general discussion it became clear that the Working Group was, in principle, of the opinion that this convention should include a third substantial part on access to justice. However, it was recognized that this issue would require careful wording.

Paragraph 1

It was suggested that the following terms needed further clarification: "in addition to", "judicial and quasi-judicial proceedings" and "matters related to the protection of the environment". The term "quasi-judicial proceedings" was further explained by making reference to administrative proceedings whereby, for example, a minister acted in a judicial manner. It was also suggested that this paragraph should not allow everybody to have access to justice, but only the public if it had an interest.

Paragraph 2

Although the Working Group agreed on the intention of this paragraph, it was also agreed that the text would have to be reconsidered. In particular, the Working Group suggested deleting "fully" and clarifying "fair and transparent provisions" and "interim relief".

Paragraph 3

The wording of the second sentence would require further clarification, in particular the term "legal services".

Paragraph 4

It was noted that this paragraph did not duplicate or overlap with paragraphs 1 and/or 2. It was suggested that "poverty" should be added.

Paragraph 5

The Working Group considered that this paragraph would need further consideration in particular in order to clarify "Where appropriate" and "with respect of the protection of the environment".

Article 7

The Working Group agreed that an article on the Meeting of the Parties should be included in this convention, but that the wording would need to be further reviewed in the light of the practice of other international legal instruments. In this respect, it was suggested that the term "Meeting of Parties" should be replaced by "Conference of the Parties".

Paragraph 1

Some delegations held that convening a Meeting of the Parties every year was cumbersome and suggested preparing wording that would allow the Contracting Parties to decide on this issue. It was also suggested that the third sentence

would need further consideration. It was proposed to refer explicitly to the participation of intergovernmental and non-governmental organizations in these meetings either in this paragraph or in the rules of procedure.

Paragraph 2

With respect to the issue of protocols, some delegations suggested not mentioning this in the paragraph, while others suggested that the Parties should not only prepare protocols but also adopt them. It was noted that a separate article on the adoption of protocols should be included in the convention. In relation to subparagraph (f), a number of delegations supported the preparation of mechanisms to support compliance, either in the form of an annex to the convention or a protocol. Some delegations suggested deleting in this subparagraph "which allows for public participation in this mechanism", while other reserved their position in this regard. Some delegations explicitly supported the retention of this clause and it was suggested that the texts of human rights conventions could be used as precedents. It was proposed to move the issue of subparagraph (g) to article 4. Details of the implementation of national pollutant release and transfer registers could be placed in an annex to the convention. It was also suggested that the first meeting of the Parties should consider the financial issues related to the convention.

Annex II

Tentative schedule of meetings for 1997

| | | |
|-------------------------------|---|-----------------|
| 17 - 20 February 1997 | - | Fourth session |
| 17 - 20 June 1997 | - | Fifth session |
| 7 - 10 July 1997 | - | Sixth session |
| 29 September - 2 October 1997 | - | Seventh session |