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ECONOMIC COMMISSION FOR EUROPE

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 SIXTH SESSION**

1. The sixth 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 9 to 11 July 1997.
2. It was attended by delegations of: Albania; Armenia; Austria; Belarus; Belgium; Bulgaria; Czech Republic; Denmark; Estonia; Finland; France; Georgia; Germany; Hungary; Italy; Kazakstan; Kyrgyzstan; Latvia; Lithuania; Netherlands; Norway; Poland; Republic of Moldova; Romania; Russian Federation; Spain; Sweden; Switzerland; Ukraine; United Kingdom; and Uzbekistan.
3. The Commission of the European Communities was also represented.
4. Representatives of the United Nations Environment Programme (UNEP) and the United Nations Industrial Development Organization (UNIDO) also attended.
5. The following non-governmental organizations were represented: Environmental NGOs Coalition; International Council of Environmental Law (ICEL); Regional Environmental Center for Central and Eastern Europe (REC); and World Conservation Union (IUCN).

6. The Working Group adopted the agenda as contained in document CEP/AC.3/11.
7. The Chairman recalled the Working Group's decision at its fifth session (CEP/AC.3/10, para. 11) to convene an informal meeting before the sixth session.
8. Mr. F. La Camera (Italy) introduced the report of the informal meeting and explained that the informal meeting had prepared options for article 1 on "definitions" and article 2 on "general provisions". The Chairman and the Working Group expressed their appreciation to Mr. La Camera and the informal meeting for their important work.
9. The Working Group considered the text drafted at the informal meeting and prepared a consolidated version (see annex I below). In this connection the Environmental NGOs Coalition expressed its uneasiness with the blanket exclusion of bodies acting in a legislative capacity from the scope of the convention. In particular, it wanted the Working Group to await the outcome of the Conference of Parliamentarians to be organized by GLOBE on the convention in Stockholm (Sweden) in September 1997 and take it into account.
10. The delegation of Belgium introduced a proposal by the delegations of Belgium, Denmark and Italy to include a provision on the right to a healthy environment (see annex II below). In a preliminary discussion, most delegations welcomed the proposal. The Working Group decided to consider it at a later stage.
11. The Working Group considered article 3 in document CEP/AC.3/R.4 and agreed on amendments as included in annex III below.
12. The delegation of Italy offered to host the eighth session of the Working Group (1-5 December 1997) in Rome (Italy). The Working Group expressed its appreciation for this offer.
13. The Chairman recalled that a small drafting group would meet in Geneva on 11-15 August 1997 to prepare a consolidated draft of the convention in the light of the work undertaken at all sessions of the Working Group for consideration at its seventh session (CEP/AC.3/10, para. 11). The Chairman indicated that, in addition to the persons referred to in paragraph 11 of document CEP/AC.3/10, Mr. Pavlov (Bulgaria), Ms. Horvath (Netherlands) and Mrs. Kryjanovskaia (Ukraine) would also participate in this drafting group. The delegation of the United Kingdom and the Environmental NGOs Coalition circulated proposals (see annexes IV, V and VI below). The delegation of Germany and the Environmental NGOs Coalition circulated a joint proposal to combine options I and II for paragraph 1 as included in annex V to document CEP/AC.3/10 (see annex VII below).
14. The Working Group adopted its report on Friday, 11 July 1997.

Annex I

AMENDMENTS TO ARTICLES 1 AND 2 AS INCLUDED  
IN DOCUMENT CEP/AC.3/R.1

Article 1

DEFINITIONS

For the purpose of this Convention,

(a) "Party" means, unless the text otherwise indicates, a Contracting Party to this Convention;

(b) "Public authority" means:

(i) Government at the national, regional and other level;

(ii) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;

(iii) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (i) or (ii) above;

[(iv) International bodies under the control or made up exclusively of Parties.]

This definition does not include bodies acting in a judicial or legislative capacity;

(c) "Environmental information" shall mean any information in written, visual, aural, electronic or any other material form on:

(i) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape 1/ and natural sites, biological diversity and its components, and the interaction among these elements; 2/

(ii) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes affecting or likely to affect the environmental elements referred to in subparagraph (i) above [cost-benefit analysis used][and economic or financial analysis used [in environmental decision-making]]; 3/, 4/, 5/

- (iii) The state of human health and safety, conditions of human life and cultural sites, in as much as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (ii);

6/

(d) "The public" means one or more natural or legal persons, and, in accordance with their national legislation or practice, their associations, organizations or groups;

(e) "Public concerned" means the public [having been directly affected or] likely to be affected by or having a[n] [sufficient] interest in the environmental decision-making including [the public] [groups, associations or organizations] [accomplishing tasks relating to [the environment] [environmental protection ]] [promoting the objectives of environmental protection]. 7/

## Article 2

### GENERAL PROVISIONS

1. Each Party shall take the necessary legislative, regulatory and other measures, including proper enforcement measures, to maintain and establish a clear and transparent framework to implement the provisions of this Convention.

2. [Each Party shall ensure that officials and authorities assist and provide guidance to the public in seeking access to environmental information, in facilitating its participation in environmental decision-making and in seeking access to justice and to this end shall [should] provide these officials and authorities with the appropriate training and resources to ensure that they can implement the provisions of this Convention effectively].

8/

3. Each Party shall ensure that public participation procedures, including [reasonable] time-frames for different phases, which will allow [sufficient] [reasonable] time for the public to prepare and participate effectively in the environmental decision-making process, [in accordance with articles 5, 6 and 7 of this Convention,] shall be provided for prior to a decision [which may have a significant impact on the environment]. 9/

4. Each Party shall promote environmental education [and] [advice] [training] for the public, especially in how to obtain access to environmental information, participate in environmental decision-making and have access to justice. 10/, 11/

5. Each Party shall provide for the appropriate recognition and support to groups, associations or organizations promoting the objective of environmental protection and ensure that its national legal system is consistent with this obligation. 12/

6. The provisions of this Convention shall not affect the right of a Party to maintain or introduce more stringent measures providing for broader access to environmental information, more extensive public participation in environmental decision-making and wider access to justice, than those of this Convention. 13/, 14/

7. Each Party shall promote the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment. 15/

16/

Notes :

1/ The delegations of Bulgaria, Italy and the Republic of Moldova preferred to have the word "landscape" in subparagraph(iii) instead of in (i).

2/ The Environmental NGOs Coalition preferred to include the reference to cultural sites and man-made environment.

3/ The delegation of the Russian Federation reserved its position with regard to subparagraph (ii).

4/ The delegation of Germany proposed to insert "negatively" after "affecting" and "so" after "or likely to".

5/ The Environmental NGOs Coalition proposed to insert after "subparagraph (i) above" the following words: "and the nature and extent of such effects".

6/ The delegations of the Netherlands and Romania reserved their position with regard to the deletion of the definition on "environmental decision-making".

7/ The delegations of Austria, Germany and the Russian Federation reserved their position in this regard.

8/ It was suggested that the following text should be considered for the preamble:

Each Party shall [should] encourage educational institutions to provide curricula that instil knowledge essential to understanding the environment and the opportunities of sustainable development, in particular in the education of children. These institutions shall [should] also be encouraged to provide

specific programmes and training addressing environmental and sustainable development issues. Other types of education, inter alia, by private organizations, shall [should] also be encouraged to promote widespread public awareness of and participation in decisions affecting the environment and sustainable development.

9/ The Working Group decided to discuss the content of this paragraph in the context of article 5 on the basis of a proposal to be provided by the Environmental NGOs Coalition.

10/ The delegation of Germany preferred "should" to "shall".

11/ The Working Group requested the small drafting group at its meeting on 11-15 August 1997 to (i) consider new wording for "advice" or "training"; (ii) redraft this paragraph so that it would be particularly applicable for the purpose of the implementation of the Convention; and (iii) prepare a consolidated version of this paragraph for its seventh session.

12/ The delegation of the Russian Federation reserved its position with regard of this paragraph.

13/ The Working Group requested the small drafting group to identify the correct translation in Russian for "more stringent" so that it could not be understood to mean "restrictive".

14/ The Environmental NGOs Coalition proposed to add:

"They shall not be applied in a way which reduces or curtails existing rights of access to information, public participation in environmental decision-making and access to justice under national law."

Several delegations supported this proposal.

15/ The delegation of Germany preferred "should" to "shall".

16/ The Environmental NGOs Coalition undertook to provide wording for a provision in article 2 on the link between the three pillars of the convention.

Annex II

PROPOSAL BY THE DELEGATIONS OF BELGIUM, DENMARK AND ITALY

1. Replace in document CEP/AC.3/R.1 the first preambular paragraph by the following six paragraphs:

"Recalling Principle 1 of the Stockholm Declaration on the Human Environment,

Recalling Principles 1, 3 and 10 of the Rio Declaration on Environment and Development,

Recalling General Assembly resolution 45/94 of 14 December 1990,

Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself,

Recognizing that every person has the right to live in an environment adequate to his health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations,

Considering that, to be able to assert this right and observe this duty, citizens must have access to environmental information, must be entitled to participate in environmental decision-making and may have access to justice,"

2. Insert the following new article 1 before the article on "Definitions" and renumber the remaining articles accordingly:

"Article 1

OBJECTIVE

In order to protect the right of every person to live in an environment adequate to his health and well-being, each Party shall guarantee the rights of public participation in environmental decision-making, access to environmental information, and access to justice in accordance with the provisions of this Convention".

Note: This proposal supersedes the earlier proposal by the delegation of Belgium contained in CEP/AC.3/2, annex I.

Annex III

AMENDMENTS TO THE ANNEX TO DOCUMENT CEP/AC.3/R.4

Article 3, paragraph 1

- In subparagraph (a) delete [or any other factors]
- In subparagraph (b) for [demonstrated] substitute [proved]
- In subparagraph (d) insert square brackets around be likely to
- The Working Group decided to discuss the last two sentences of this paragraph in the context of article 4.

Article 3, paragraph 1A

For this existing text read

The environmental information referred to in paragraph 1 shall be made available as soon as possible and at the latest within 30 days after the request has been submitted unless the volume and the complexity of the information justifies an extension of this period up to eight weeks after the request. [The applicant shall be informed of such a decision to extend the period [and of the reasons for this extension.]] 1/

Article 3, paragraph 2

- In subparagraph (c) delete [provided that such completion is not unduly delayed]
- and before internal insert concerns

Article 3, paragraph 2A

- For subparagraph (a) read

(a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;

- In subparagraph (b) delete [,the requirements of the national legislation on the special regime for access to information in the framework of military and defence activities, civil fuel cycle and nuclear industry, programmes in connection with maintaining the regime of non-proliferation of nuclear arms] 2/

- In subparagraph (c) delete [or a fair trial in matters which are sub justice or are under enquiry (including disciplinary [or administrative] enquiries) or which are the subject of preliminary investigation proceedings] 3/

- In subparagraph (d) delete [and the competitive position of a third party,] [unless the requested information relates to emissions or impacts on the environment]



Notes :

1/ The delegation of Germany preferred to have a period of eight weeks instead of 30 days.

2/ The delegation of the Russian Federation expressed its reservations about the deletion of this text.

3/ The delegation of Germany expressed its reservations about the deletion of this text.

Annex IV

PROPOSAL BY THE UNITED KINGDOM FOR A NON-COMPLIANCE MECHANISM

The United Kingdom welcomes the widespread support for the development of a non-compliance mechanism that was expressed at the fifth session of the Working Group.

The United Kingdom considers that the development of a non-compliance mechanism should be based closely on the principles set down in paragraph 23.1 of the 1993 Lucerne Ministerial Declaration, which said:

"We urge Contracting Parties to environmental conventions in the UN/ECE region, where appropriate, to cooperate within the respective governing bodies of those conventions to work towards non-compliance regimes which:

- Aim to avoid complexity;
- Are non-confrontational;
- Are transparent;
- Leave the competence for the taking of decision to be determined by the Contracting Parties;
- Leave the Contracting Parties to each convention to consider what technical and financial assistance may be required, within the context of the specific agreement; and
- Include a transparent and revealing reporting system and procedures, as agreed to by the Parties."

The United Kingdom agrees that there should be legally binding provisions in the new convention committing the Contracting Parties to the development of a non-compliance mechanism. To give suitable emphasis to the process it should be set out in a new and separate article.

This said, we do not consider that it is necessary or appropriate to seek to set out all the details of a non-compliance mechanism for the convention in the convention itself for the following reasons:

- The non-compliance mechanism will need to be tailored to meet the requirements of the convention. This will be impossible until the text of the convention is finalized;
- The Working Group still has a considerable task to complete the text of the convention before the Aarhus Conference. The Working Group might well become overloaded if it took on the complicated and time-consuming technical task of developing a non-compliance mechanism;

- There is no urgency - the non-compliance mechanism needs to be in place only at the time of the first meeting of the Parties, which will be some considerable time after the convention is adopted;

- If the non-compliance mechanism were set out in the text of the convention itself, it would be both difficult and slow to modify its detail in the light of experience gained in its operation. It would be far more efficient to provide for the non-compliance mechanism to be established in a decision of the Meeting of the Parties, which could then quickly and easily be adjusted to meet changing circumstances and experience.

The United Kingdom proposes the following article for consideration by the Working Group as an article on a non-compliance mechanism in the convention:

Article [ ]

MONITORING COMPLIANCE

1. At their first meeting, after entry into force of the Convention, the Parties shall establish a procedure for monitoring compliance with the obligations arising under the Convention. The procedure shall have the objective of assisting those Parties that have difficulties in fulfilling their obligations under the Convention. The procedure shall be simple, non-confrontational, non-judicial and transparent.

2. The application of the procedure shall be without prejudice to the provisions of article [ ]. 1/

Note :

1/ The article on settlement of disputes.

Annex V

PROPOSAL BY THE ENVIRONMENTAL NGOS, COALITION REGARDING A PROVISION  
FOR POLLUTANT RELEASE AND TRANSFER REGISTERS

Delete draft article 7 (2)(g) (as set out in CEP/AC.3/R.1), revise draft article 4.6 (as appearing in document CEP/AC.3/R.4), and insert a new draft article 4.6A and annex X, as follows:

Article 4

DUTIES WITH RESPECT TO ENVIRONMENTAL INFORMATION

6. Each Party:

(a) [Shall] [Should] [require] [encourage] entities whose activities have a significant adverse impact on the environment to report regularly to the public on the environmental impact of their activities, including their resource and energy consumption; and

(b) Shall establish a national system for pollutant release and transfer registers, in accordance with and using as a framework at least those elements listed in paragraph 1 of annex X, which shall be:

- (i) Maintained through periodic reporting, on a mandatory basis, of inputs to, and releases and transfers from, a specified range of activities to air, water, land, on-site and off-site treatment and disposal and the product stream of a specified range of substances, including water, energy and resource use;
- (ii) Compiled through a standardized reporting form for input into a structure computer database permitting production of reports on individual processes and sites, estimates of releases from diffuse sources and aggregation of data.

6A. At their first meeting, the Parties shall:

- (a) Consider amending annex X; and
- (b) Start the preparation of a protocol to this Convention to harmonize and develop, as appropriate, on the basis of the framework set out in annex X, national systems for pollutant release and transfer registers.

Annex X

1. A national system for pollutant release and transfer registers established pursuant to article 4.6 shall incorporate at least the following elements:

- (a) (i) Precise geographic location of point sources;

- (ii) Identification of local geographical area of emissions from diffuse sources on a specified area basis;

(b) A list of individual reportable substances, established under national legislation, having the following characteristics: explosive, oxidizing, flammable, irritant, a risk to health, toxic, carcinogenic, corrosive, infectious, teratogenic, mutagenic, eco-toxic, endocrine-disrupting, neurotoxic, persistent, bioaccumulative, or contributing to global warming or the build-up of tropospheric ozone and other oxidizing photo-chemicals;

(c) Energy and water consumption data;

(d) Periodic reporting, from measurements or estimates as appropriate, not less than annually;

(e) All releases and transfers to air, outer space, freshwater, coastal water, estuarial water, sewers, land, identified and categorized disposal facilities, as well as into products;

(f) Inclusion of accidental releases;

(g) The basis for estimation of releases;

(h) On-site inventory;

(i) Waste reduction activities;

(j) Identifiers (i.e., common codes) for data elements such as substances, facilities, installations, processes and locations.

2. The system shall structure data for entry, organization, analysis and access through computer database management and shall provide for electronic methods for data dissemination.

3. There shall be active and regular public dissemination of each register, particularly to local communities.

4. Commercial confidentiality shall be applied consistently with article 3. Where such confidentiality is allowed, each register shall indicate what type of data have not been entered onto the register on the ground of commercial confidentiality.

5. Each Party shall, in accordance with the polluter pays principle, consider raising the cost of establishing and maintaining its system (including data collection and data dissemination) from polluters.

Annex VI

PROPOSAL BY THE ENVIRONMENTAL NGOS COALITION REGARDING A PROVISION  
FOR NON-COMPLIANCE MECHANISMS (BASED ON CEP/AC.3/R.1)

For draft article 7.2 read:

2. Any body or agency belonging to one of the following categories, namely:

(a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies or bodies; and

(b) Other non-governmental agencies or bodies,

may inform the Executive Secretary of ECE, at least three months before any meeting of the Parties, of its wish to be represented at that meeting. It shall be admitted and be able to speak and participate fully unless, at least one month before the meeting, three-quarters of the Parties have informed the Executive Secretary of ECE of their objections.

After draft article 7 insert

Article 8

NON-COMPLIANCE COMMITTEE

1. A Non-compliance Committee (hereafter referred to as the Committee) shall be established in accordance with and having the functions set out in this article. The Committee shall meet twice a year, normally at the United Nations Office at Geneva.

2. The Committee shall consist of nine members and shall carry out the functions hereinafter provided. It shall be composed of persons with recognized competence in matters of access to information, public participation or access to justice. No fewer than three members of the Committee shall have experience of working for or with environmental citizens' organizations. The Committee may not include more than two citizens of the same Party.

3. The members of the Committee shall serve in their personal capacities, and may not be employed by a public authority of any Party or by any environmental citizens' organization.

4. The members of the Committee shall be elected for a period of three years at the meeting of the Parties. The members shall be elected by the Parties by open ballot from a list of persons having competence as prescribed in paragraph 2. At the meeting of the Parties:

(a) Each State Party may nominate one of two persons; and

(b) Any environmental citizens' organization admitted to the meeting in accordance with article 7.2 may nominate one person.

In addition, the Meeting of the Parties may accept nominations from citizens.

5. Each Party shall, and any other agency, body or individual may, report information to the Executive Secretary of ECE regarding measures for implementing the obligations of the Convention sufficiently in advance of meetings of the Parties for consideration by the Committee. The Executive Secretary shall transmit these reports to the Committee for consideration. Each Party shall make available its reports to the public.

6. The Committee shall study the reports submitted by the Parties and thereafter shall submit to the Parties at their next meeting and to the Executive Secretary such comments as it may consider appropriate. The Committee may also undertake to consider any matter relating to compliance with the Convention which it sees fit and may report thereon as appropriate, in addition to references and complaints under paragraphs 7 and 8 below.

7. If a Party considers that another Party is not giving effect to the provisions of the Convention, it may, by a written communication, bring the matter to the attention of that Party. If the matter is not resolved to the satisfaction of both Parties concerned within three months, either Party may refer the matter to the Committee.

8. Individuals who claim to be victims of a violation by a Party of any provision of this Convention shall have the right to make complaints to the Committee. Non-governmental agencies or bodies, such as environmental citizens' organizations, may also complain to the Committee if they claim that a Party has violated any of the provisions of this Convention.

9. The Committee shall receive and consider references and complaints made under paragraphs 7 and 8 above. The Committee may decide not to consider a particular complaint which it considers to be vexatious or abusive.

10. The Committee shall bring any reference or complaint made under paragraphs 7 or 8 above to the attention of the Party alleged to be violating any provision of the Convention. Within three months of so doing, that Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy or redress, if any, that may have been provided or taken by that Party.

11. The Committee shall consider all reports, matters, references or complaints in the light of all written information made available to it. If deemed necessary by the Committee, it may arrange for oral proceedings and on-site inspections.

12. The Committee shall perform its duties in an open and transparent manner. Its meetings shall be open to the public, and their minutes and Committee's documents and correspondence shall be recorded by the Executive Secretary and made available to the public. Any secrecy which the Committee

deems necessary shall be reasoned, recorded and strictly limited in scope and duration.

13. Subject to paragraph 14 below, a Party found by the Committee to be acting in violation of the provisions of the Convention shall, as soon as possible, take the measures needed in order to comply with the Convention.

14. If a Party disputes any finding of the Committee, it may refer the matter to arbitration in accordance with the procedure set out in annex [I], as if the Committee were a Party to this Convention and as if, upon such reference, the Committee were a party to the dispute.



Annex VII

PROPOSAL BY THE DELEGATION OF GERMANY AND THE ENVIRONMENTAL NGOS COALITION  
TO COMBINE OPTIONS I AND II FOR PARAGRAPH 1  
AS INCLUDED IN ANNEX V TO DOCUMENT CEP/AC.3/10

"Each Party shall grant to such persons access to a procedure for reconsideration by the same public authority, where the administrative law of that Party so provides, or to another review procedure established by law before an impartial administrative authority."