



**Economic and Social
Council**

Distr.
RESTRICTED

CEP/AC.3/14
21 October 1997

ORIGINAL : ENGLISH

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 SEVENTH SESSION

1. The seventh 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 29 September to 3 October 1997.
2. It was attended by delegations of: Albania; Armenia; Austria; Belarus; Belgium; Bulgaria; Czech Republic; Denmark; Estonia; Finland; France; Georgia; Germany; Greece; Hungary; Italy; Kazakhstan; Kyrgyzstan; Latvia; Lithuania; Netherlands; Norway; Poland; Portugal; Republic of Moldova; Romania; Russian Federation; Slovenia; Spain; Sweden; Switzerland; Turkey; Ukraine; United Kingdom; and Uzbekistan.
3. The Commission of the European Communities was also represented.
4. Representatives of the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP) also attended.

5. The following non-governmental organizations (NGOs), were represented: Environmental NGOs Coalition; Globe Europe Network; International Council of Environmental Law (ICEL); International Council of Jewish Women (ICJW); NGO Working Group on Women for the region of the Economic Commission for Europe (North America); 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.3/13.

7. The representative of Globe introduced the Stockholm Statement, which had been agreed upon at the Globe Europe Conference, in early September 1997 in Stockholm, Sweden.

8. The Working Group considered articles 4, 5, 6 and 7 as set out in document CEP/AC.3/R.5. It agreed upon the revised wording for articles 4, 5 and 6, as included in annex I to the present report. The following delegations expressed their reservations on specific texts in this annex. The delegation of Germany suggested inserting in article 4, paragraph 2 (b), after "such as", "where appropriate". It also preferred the deletion of article 4, paragraph 2 (c), and of the following words in article 4, paragraph 4: "and information on pressures on the environment". It preferred "should" instead of "shall" in article 4, paragraph 7, and reserved its position with regard to the wording of article 5, paragraph 2 (d)(vi). The delegations of the Russian Federation and Ukraine reserved their positions with respect to article 4, paragraph 3. The delegations of Armenia, Belarus, the Russian Federation and Ukraine requested the deletion of article 4 paragraph 8. The Environmental NGOs Coalition reserved its position with regard to article 5, paragraph 5. As a consequence of the revised wording of article 5, paragraphs 6 and 7, the Working Group decided to delete annexes II and III to document CEP/AC.3/R.5. The delegation of the Russian Federation preferred a better Russian translation on the word "transparent" in article 4, paragraph 2, and preferred the deletion of article 6.

9. The Working Group decided to delete paragraph 8 of article 5 and to discuss its content in the context of article 2 on general provisions, on the basis of the following suggestion by the delegation of Poland:

"Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement."

10. The Working Group also decided to insert in article 10, paragraph 2:

"At their first meeting, review experience of Parties in implementing the provisions of article 4, paragraph 9, and consider what steps are necessary to develop further the system referred to in that provision, taking into account international processes and developments."

11. The delegation of Romania stated that the Environment Ministers who would eventually sign the convention would want it to reflect the idea of partnership between "public authority" and "civil society" (NGOs). So far the

text imposed many duties on the public authority, but gave it few rights, while it granted many rights to civil society but did not impose any duties on it. However, in a free society public participation was both a right and a duty. Citizens had the right to information, but also the duty to understand the decision-making process, and to fully participate in it. Also, the draft was becoming unwieldy, as the different versions proliferated. The delegation, therefore, suggested that it should be presented in tabular form and the various options put to the vote.

12. The delegation of Italy proposed to replace the second sentence of article 5, paragraph 1, in CEP/AC.3/R.5, by:

Each Party shall also apply this article to decisions on proposed activities outside the scope of annex I which may have a[n] [significant] effect on the environment [comparable to that of those listed in annex I]. Each Party shall determine, in accordance with its national law, whether a particular proposed activity outside of the scope of annex I must be subject to this article. In the light of experience gained, Parties shall consider establishing a list of such proposed activities of categories or such activities.

13. The delegation of the Republic of Moldova proposed to replace the second sentence of article 5, paragraph 1, in CEP/AC.3/R.5, by:

Each Party shall in accordance with its national law, also apply this article to decisions on other proposed activities which may have an impact on the environment comparable to that of those listed in annex I. In the light of experience gained, Parties shall consider establishing a list of such proposed activities or categories of such activities, which are outside the scope of annex I.

14. The delegations of the Russian Federation and Ukraine proposed the following wording for the second sentence in paragraph 1 of article 5 (in CEP/AC.3/R.5):

Each Party shall, in accordance with its national law and practices, also apply this article to decisions on proposed activities outside the scope of annex I which may have an appreciable effect on the environment.

15. The delegation of Italy, with the support of a number of delegations, proposed the following alternative wording for article 5, paragraph 6, which the Working Group decided to put in the present report:

"6. Each Party shall ensure that the relevant information is provided for the public participation under this article. As a minimum such information shall include [:] [the elements listed in annex II.]

[(a) A description of the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;

(b) An outline of the main alternatives studied by the developer;

(c) A description of the expected impacts of the proposed activity and their consequences;

(d) A description of the measures envisaged to prevent and/or reduce the impacts.]

This information shall be made accessible to the public concerned for consultation as soon as possible and free of charge."

16. The delegation of Italy reserved its position on article 5. It stated that relevant legal provisions were not clearly defined, and that any confusion between this article and article 3 must be avoided. The content of the relevant information was a crucial point for this article. Without any further clarification, it understood that this article would apply in accordance with existing national legislation.

17. Italy and the NGO Coalition objected to deleting the words "including the extent to which it reflects the comments and objections made by the public" in article 5, paragraph 7 (b) (CEP/AC.3/R.5).

18. The delegation of the Russian Federation proposed the deletion of the last sentence of article 5, paragraph 9. The delegation of Germany preferred the deletion of "and" in the last line of article 5, paragraph 10.

19. The Environmental NGOs Coalition and REC proposed new wording for article 7 and new related definitions, as set out in annex II to the present report.

20. The NGO Working Group on Women stated that the gender perspective was part of environmental policy and that in the Preamble to the convention the following sentence should be included: "Recognizing that environmental issues are the same concern for women and for men."

21. The Working Group adopted its report on Friday, 3 October 1997.

Annex I

Article 4

[DUTIES WITH RESPECT TO] ENVIRONMENTAL INFORMATION

1. Each Party shall ensure that:

(a) Public authorities possess and update environmental information which is relevant to their functions;

(b) Mandatory systems are established for ensuring that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;

(c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.

2. Each Party shall ensure that [, within the framework of national legislation and practices,] the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:

(a) Providing sufficient information to the public [,within the framework of national legislation and practices,] about the type and scope of environmental information held by relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;

- (b) Establishing and maintaining practical arrangements, such as:
- (i) Publicly accessible lists, registers or files;
 - (ii) Requiring officials to support the public in seeking access to information under this Convention; and
 - (ii) The identification of points of contact; and

(c) Providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) free of charge.

3. Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks. Information accessible in this form should include:

(a) Reports on the state of the environment, as referred to in paragraph 4 below;

(b) Texts of legislation on or relating to the environment;

(c) As appropriate, policies, plans and programmes on or relating to the environment and environmental agreements; and

(d) Other information, to the extent that the availability of such information in this form would facilitate the application of national law implementing this Convention,

provided that such information is already available in electronic form.

4. Each Party shall, at regular intervals not exceeding three or four years, publish and disseminate a national report on the state of the environment, including information on the quality of the environment and information on pressures on the environment.

5. Each Party shall take measures within the framework of its legislation for the purpose of disseminating inter alia:

(a) Legislation and policy documents such as documents on strategies, policies, programmes and action plans which are related to the environment, and progress reports on their implementation, prepared at various levels of public administration; and

(b) International treaties, conventions and agreements on environmental issues [including, in particular, any associated mechanisms for submitting information to international bodies concerning non-compliance, adopted with the participation of the Party concerned within the framework of the competent international organizations or international conferences];

(c) Other significant international documents on environmental issues, as appropriate.

6. Each Party shall encourage operators whose activities have a significant impact on the environment to inform the public regularly on the environmental impact of their activities and products, where appropriate within the framework of voluntary eco-labelling or eco-auditing schemes or by other means.

7. Each Party shall:

(a) Publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals;

(b) Publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention; and

(c) Provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels.

8. [Each Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.]

[9. Each Party shall progressively establish, taking into account international processes where appropriate, a national system for a pollution inventory or register on a structured computerized and publicly accessible database compiled through standardized reporting forms. Such a system should

include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and off-site treatment and disposal sites.]

10. Nothing in this article may prejudice the right of Parties to refuse to disclose certain environmental information in accordance with article 3, paragraphs 3 and 4.

Article 5

[DECISIONS ON SPECIFIC ACTIVITIES]

1. Each Party shall implement the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I. [Each Party shall, in accordance with its national law, also apply this article to decisions on proposed activities outside the scope of annex I which may have an effect on the environment comparable to that of those listed in annex I. Parties shall determine whether a particular proposed activity must be subject to this article. In the light of experience gained, Parties shall consider establishing a list of such proposed activities or categories of such activities.]

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

- (a) The proposed activity and the application on which a decision will be taken;
- (b) The nature of possible decisions or the draft decision;
- (c) The public authority responsible for making the decision;
- (d) The envisaged procedure including, as and when this information can be provided:
 - (i) The commencement of the procedure;
 - (ii) The opportunities for the public to participate;
 - (iii) The time and place of any envisaged public hearing;
 - (iv) An indication of the public authority from which relevant information can be obtained;
 - (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time scheduled for transmittal of comments or questions; and
 - (vi) An indication of what environmental information relevant to the proposed activity is available.

3. The public participation procedures shall include reasonable time frames for different phases, which allow sufficient time for informing the public in accordance with paragraph 2 and for the public to prepare and participate effectively during the environmental decision-making.

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request, free of charge and as soon as it becomes available to all information relevant to the decision-making, referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 3, paragraphs 3 and 4.

7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

10. Each Party shall ensure that, when a public authority reconsiders or updates the operational conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 8 of this article are applied mutatis mutandis, and where appropriate.

Article 6

PUBLIC PARTICIPATION IN PROCEDURES CONCERNING [POLICIES,] PLANS AND PROGRAMMES RELATED TO THE ENVIRONMENT

Each Party shall [promote] public participation during the preparation of [policies,] plans and programmes related to the environment within a transparent and fair framework, having provided the necessary information to the public. Within this framework article 5, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention.

Annex II**PROPOSALS BY NGO COALITION AND REGIONAL ENVIRONMENTAL CENTER**

The Environmental NGOs Coalition and the Regional Environmental Center put forward: (a) a new definition related to article 6, to be inserted in article 1 bis; (b) a new definition related to article 7, to be inserted in article 1 bis; and (c) a new article 7.

A. New definition related to article 6

"Policies, strategies, plans and programmes" means any decision (including significant modifications), other than a decision covered by articles 5 and 7, by a public authority which may have a significant effect on the environment and which is contained in a written document or statement, such as:

- (a) National environmental action plans and programmes;
- (b) Plans and programmes at national, regional and local level in sectors such as transport (including transport corridors, port facilities and airports), energy, waste management, water resource management, industry (including extraction of resources), forestry, agriculture, telecommunications and tourism;
- (c) Policies and strategies which may affect the content of, or which provide a framework for, plans and programmes referred to in subparagraphs (a) and (b) above;
- (d) Policies of a Party in respect of international decision-making processes.

B. New definition related to article 7

"General rules" means:

- (a) Decisions of national and regional legislative bodies which have legislative effect, such as acts of Parliament;
- (b) Decisions of local legislative bodies which have legislative effect, such as municipal ordinances;
- (c) Decisions of public authorities which have legislative effect, such as governmental decrees, ministerial decrees, rules and regulations;
- (d) Decisions of legislative bodies of regional economic integration organizations which have legislative effect;

(e) Decisions of legislative bodies or public authorities to undertake legal obligations in or pursuant to international treaties or agreements, which may have a significant effect on the environment.

C. Article 7 Public participation concerning general rules

1. Each Party shall promote public participation during the preparation of general rules within a transparent and fair framework, having provided information to the public on how it may participate. Within this framework, article 5, paragraphs 3, 4 and 8, shall be applied and draft general rules shall be published. The public which may participate in decisions of a public authority in respect of general rules shall be identified by the relevant public authorities taking into account the objectives of this Convention.

2. Plenary meetings of legislative bodies shall be open to the public, and committee meetings of legislative bodies shall generally be open to the public. Records of the proceedings shall be publicly accessible.

3. Legislative bodies and public authorities shall consider holding public hearings during the preparation of general rules, to which relevant environmental non-governmental organizations should be invited. Public meetings shall be open to the public at large.

4. Each Party shall take measures within its national law whereby environmental non-governmental organizations and individuals can initiate processes which can lead to the adoption of general rules.