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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 NINTH SESSION

1. The ninth 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 12 to 16 January 1998.
2. It was attended by delegations of: Albania; Armenia; Austria; Belarus; Belgium; Bulgaria; Croatia; Czech Republic; Denmark; Estonia; Finland; France; Georgia; Germany; Greece; Hungary; Ireland; Italy; Kazakhstan; Kyrgyzstan; Lithuania; Netherlands; Norway; Poland; Portugal; Republic of Moldova; Romania; Russian Federation; Slovakia; Slovenia; Spain; Sweden; Switzerland; Turkey; Ukraine; United Kingdom; and Uzbekistan.
3. The Commission of the European Communities was also represented.
4. Representatives of the Council of the European Union and the United Nations Environment Programme (UNEP) also attended.
5. The following non-governmental organizations (NGOs) 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.3/17.

7. The delegation of the Commission of the European Communities delivered a general statement, which was made available to the Working Group. The Environmental NGOs Coalition also made a general statement, concerning the lack of transparency of the EU Member States' position in the negotiations and the importance of not weakening the draft convention even further, particularly at this stage as regards the application of the public interest test to requests for information and the provisions on pollutant release and transfer registers and non-compliance.

8. A working group under the Congress of Local and Regional Authorities of the Council of Europe had prepared a paper in which it expressed its views on the current draft of the convention, which was made available to the Meeting. The Working Group decided to bear these comments in mind when discussing the relevant articles of the convention.

9. The Working Group used as a basis for the discussion document CEP/AC.3/R.5, and the revisions included in the reports of its seventh and eighth sessions (CEP/AC.3/14 and 16). The Working Group agreed to revise the text of the convention as set out in annex I to the present report. Delegations made the following specific comments regarding this revision.

10. REC proposed to include in the preamble the following:

"Recognizing the desirability for legislative bodies to include public participation in their proceedings, and calling upon them to uphold the principles of this Convention".

11. At the adoption of the report, the delegation of the United Kingdom reserved its position on article 1.

12. In the discussion regarding the penultimate preambular paragraph, the delegation of Turkey pointed out that it was not a Party to the conventions mentioned. The delegation of Turkey declared that there was a contradiction within old article 3, paragraph 1 (CEP/AC.3/R.5), which stipulated, on the one hand, that each Party should act within the framework of its national legislation and, on the other, that it would have to be applied without regard to citizenship, nationality or domicile. Following the discussions, the delegation of Turkey informed the delegations present that the Turkish administrative and judicial authorities would apply this paragraph in accordance with the provisions of Turkish legislation. The Environmental NGOs Coalition re-emphasized its desire to include express reference to "where an organization has its registered seat or the effective centre of its activities" in the "non-discrimination" provisions of the convention, either specifically (in old art. 3, para. 1 (a) (CEP/AC.3/R.5) and art. 9 para. 6 (CEP/AC.3/16)) or by inserting a general provision along the lines proposed by the Netherlands (in art. 3, see annex II below). The delegations of Denmark and Norway as well as the Environmental NGOs Coalition and REC reserved their position with regard to the deletion of the text on submitting information to international bodies concerning non-compliance in new

article 5, paragraph 5 (b), and noted the options of addressing this matter in the Århus declaration and reverting to it after the signature of the convention.

13. The Commission of the European Communities reserved its position regarding new article 5, paragraph 8, and questioned the relationship between this provision and paragraph 6 of the same article. The delegation of the Russian Federation also reserved its position regarding new article 5, paragraph 8. The delegation of Italy reserved its position on new article 6. It stated that relevant legal provisions were not clearly defined, and that any confusion between this article and new article 4 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 subject to European Community and national legislation. The Environmental NGOs Coalition objected to the dilution of an already weak, recommendatory second sentence in new article 5, paragraph 9. It also objected to the weak nature of new article 7 and opposed the further dilution of public participation in the preparation of policies. The delegation of Turkey expressed a reservation regarding the insertion of the text included in new article 6, paragraph 2 (e). The delegation of Denmark reiterated its reservation regarding the words "strive to" as included in new article 8, paragraph 1, and proposed new wording for this article as included in annex II to this report. The delegation of France expressed a general reservation regarding the current wording of article 8.

14. The delegation of the Russian Federation expressed a reservation on the title of new article 8. The Chairman proposed a new title for this article, as included in annex II of the present report, on the understanding that the words "executive regulations" were important for some delegations.

15. The delegations of Denmark, Finland, Norway and Sweden stated that, with regard to the notion of "having access to" review procedures as referred to paragraphs 1, 2 and 3 of article 9 (CEP/AC.3/16) and the notion of final decisions "being binding" in article 9, paragraph 1, third sub-paragraph, they wished to clarify that their "Ombudsman institution" implied neither a legal right to any review procedure, nor that a decision by the Ombudsman was binding on any public authority. At the same time, these delegations underscored that they felt confident that in practical terms the "Ombudsman institution" met the requirements of article 9, paragraph 4. They also stressed that the procedures of the "Ombudsman institution" did not provide for injunctive relief as referred to in article 9, paragraph 4.

16. The delegation of Denmark reserved its position with regard to the revised wording of article 9, paragraph 2. The French delegation agreed to the wording of the second sentence of article 9, paragraph 1 on the understanding that this provision regarded free access to the public judicial service and did not impinge on the obligation to be represented by a lawyer or counsel in some specific procedures. It also reserved its position with respect to the words "provided to" included in article 9, paragraph 5. The delegations of Belarus, Germany and the Russian Federation reserved their position regarding the new wording for article 10, paragraph 2 (i). The

delegations of Belgium, Denmark and Norway reserved their position on the current wording of the non-compliance article.

17. The delegation of Germany wished to keep the words "within the framework of national legislation and practices" in new article 5, paragraph 2 (a). It also wished to replace the word "shall" in the first sentence of article 7 by "should", and delete the last sentence in article 7 and the word "policies" in title of article 7. The delegation was in favour of deleting the words "including the elaboration of an appropriate instrument concerning pollution release and transfer registers or inventories which could be annexed to this Convention" in article 10, paragraph 2 (i). Moreover, it reserved its position with regard to item 4, paragraph (g) and item 21 of annex I, and favoured deleting the words "unless they hold potential for causing irreversible effect on environment and health" and "for less than two years". Concerning the same item, it was in favour of adding the word "research" after "development" and the words "and processes" after "products". The delegation reserved its position concerning article 10 paragraph 5, and article 5, paragraph 9.

18. In the discussion on annex I to the convention, the delegations of Turkey and the United Kingdom expressed a reservation with respect to new item 4 (g). The delegations of Germany, Turkey and the European Community reserved their position with regard to the addition to item 19. The delegation of the United Kingdom and the Environmental NGOs Coalition reserved their position with regard to new item 20. The delegations of France, Germany and Turkey expressed a reservation regarding item 21. The Environmental NGOs Coalition proposed to include into the annex to the convention an item 19 on movement of waste and on genetically modified organisms. It opposed any suggestion that Parties could decide to apply annex I to the convention only to land-use planning or pollution control decisions where national law provided for separate regulatory regimes, rather than to both. The Environmental NGOs Coalition submitted wording to make this absolutely clear by inserting a definition of "proposed activity" (see annex II to this report), after its proposal to add "Construction plus operation" to the beginning of annex I was objected to by the delegate of Italy as being an inappropriate place to deal with it.

19. In the discussion regarding article 10, paragraph 3, the delegations of France, the Russian Federation and Switzerland reserved their position to the new wording of this paragraph.

20. The Working Group completed the second reading of the draft convention on access to environmental information and public participation in environmental decision-making as contained in document CEP/AC.3/R.5 and requested the secretariat to prepare a revised version of the draft convention in all official ECE languages, taking into account the amendments agreed at its seventh, eighth and ninth sessions, as well as the outstanding issues. The secretariat was also requested to circulate this revised version in the original language as soon as possible after the present meeting for consideration at its forthcoming meeting. The Working Group prepared a list of outstanding issues, as included in annex II to the present report, for consideration at its forthcoming meeting. Elements for a draft resolution on

access to environmental information and public participation in environmental decision-making for possible adoption at the Ministerial Conference in Århus, Denmark, was made available to the Working Group, for consideration at its forthcoming meeting (see annex III to the present report).

21. The delegations of Belgium, Denmark and Norway expressed a reservation on the new wording of article 10, paragraphs 4 and 5. The Working Group agreed to include a new article on compliance in the convention, as annexed. The delegation of the Netherlands proposed to insert a new sentence in this article as follows: "This procedure and institutional mechanisms may provide for communications from the members of the public on compliance". The Environmental NGOs Coalition stated that it considered article 18, paragraph 4, to be inadequate in dealing with the position of the European Community in the event of its institutions falling within the definition of "public authorities".

22. As regards the new wording of article 10, paragraph 5 (see annex II below), the Environmental NGOs Coalition expressed its wish that there should be no reference to "observers" but rather to the "right to participate"; that objections should not be possible and if there must be such a possibility, objections should be reasoned and subject to a high threshold for exclusion; and that NGOs having experience in the fields to which the convention relates should be considered to be "qualified" for the purposes of this paragraph. The Environmental NGOs Coalition also objected to the deletion of article 10, paragraph 2 (i). It strongly deplored the minimalist nature of the new text adopted in respect of non-compliance (article 14 bis) and did not consider that it reflected the support expressed in the Working Group for the Belgian proposal (see CEP/AC.3/16, annex II).

23. The Working Group was informed of the fact that Ms. Barbara Rutherford of the World Wide Fund for Nature had recently passed away. The Working Group paid tribute to her memory with a moment's silence.

24. The Working Group noted that its meeting would be held from 3 (p.m.) to 6 March 1998 in Geneva. The Chairman urged delegations to be prepared to reach a consensus on the final text of the convention at that meeting.

25. The Working Group adopted its report on Friday, 16 January 1998.

Annex I

AMENDMENTS TO THE TEXT OF THE DRAFT CONVENTION AS INCLUDED IN CEP/AC.3/R.5 OR AS REVISED AT THE SEVENTH AND EIGHTH SESSIONS OF THE WORKING GROUP (SEE CEP/AC.3/14 AND CEP/AC.3/16).

For the preamble substitute:

The Parties to this Convention ,

Recalling principle 1 of the Stockholm Declaration on the Human Environment,

Recalling also principle 10 of the Rio Declaration on Environment and Development,

Recalling further General Assembly resolutions 37/7 of 28 October 1982 on the World Charter for Nature and 45/94 of 14 December 1990 on the need to ensure a healthy environment for the well-being of individuals,

Recalling the European Charter on Environment and Health adopted at the First European Conference on Environment and Health of the World Health Organization in Frankfurt-am-Main, Germany, on 8 December 1989,

Affirming the need to protect, preserve and improve the state of the environment and to ensure sustainable and environmentally sound development,

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 also that every person has the right to live in an environment adequate to his or her 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, be entitled to participate in environmental decision-making and have access to justice, and acknowledging in this regard that citizens may need assistance in order to exercise their rights,

Recognizing that, in the field of the environment, improved access to information and public participation in decision-making enhances the quality and the implementation of decisions, contributes to public awareness of environmental issues, gives the public the opportunity to express their concerns and enables public authorities to take due account of such concerns,

Aiming thereby to further the accountability and transparency of decision-making and to strengthen public support for decisions on the environment,

Recognizing that the public needs to be aware of the procedures for participation in environmental decision-making, have free access to them and know how to use them,

Recognizing also the importance of the respective roles that individual citizens, non-governmental organizations and the private sector can play in environmental protection,

Desiring to promote environmental education to further the understanding of the environment and sustainable development and to encourage widespread public awareness of, and participation in, decisions affecting the environment and sustainable development,

Noting, in this context, the importance of making use of electronic or other, future forms of communication and the media,

Recognizing the importance of fully integrating environmental considerations in governmental decision-making and the consequent need for public authorities to be in possession of accurate, comprehensive and up-to-date environmental information,

Acknowledging that public authorities hold environmental information in the public interest,

Noting the importance of adequate product information being provided to consumers to enable them to make informed environmental choices,

Concerned that effective judicial mechanisms should be accessible to the public, including organizations, so that their legitimate interests are protected and the law is enforced,

Convinced that the implementation of this Convention will contribute to strengthening democracy in the region of the United Nations Economic Commission for Europe (ECE),

Conscious of the role played in this respect by ECE and recalling, inter alia, the ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making endorsed in the Ministerial Declaration adopted by the Third Ministerial Conference "Environment for Europe" in Sofia, Bulgaria on 25 October 1995,

Bearing in mind the relevant provisions in the Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo, Finland, on 25 February 1991, the Convention on the Transboundary Effects of Industrial Accidents, and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, both done at Helsinki on 17 March 1992 and other regional conventions,

Conscious that the adoption of this Convention will have contributed to the further strengthening of the "Environment for Europe" process and to the results of the Fourth Ministerial Conference in Århus, Denmark, in June 1998,

Have agreed as follows:

**Article 1 bis**

This article will become article 2. Renumber the remaining articles and cross-references accordingly.

**Article 3**

In paragraph 1, for participation and read public participation and access to

In paragraph 4, the first line delete the and after recognition insert of

In paragraph 5, after than delete those

In paragraph 6, the first line for the read any

**Article 4**

In paragraph 4, delete the square brackets around adversely affect and delete [prejudice]

**Article 5**

For the title substitute COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION

In paragraph 2, for [, within the framework of national legislation and practices,] read , within the framework of national legislation,

In paragraph 2, subparagraph (a) delete [, within the framework of national legislation and practices,]

In paragraph 5, subparagraph (b) delete [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]

Delete the square brackets around the text in paragraph 8

For paragraph 9 substitute [9. Each Party shall progressively establish, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured computerized and publicly accessible database compiled through standardized reporting.] Such a system may 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.

**Article 6**

For [DECISIONS ON SPECIFIC ACTIVITIES] read PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES

For paragraph 1 substitute

1. (a) Each Party shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;

(b) Each Party shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end Parties shall determine whether such a proposed activity is subject to these provisions.

For paragraph 2 (d) (iv) read

"An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public"

In paragraph 2, add a new subparagraph as follows (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

Add to article 6 the following new paragraph:

[Each Party, for reasons of national defence or security, may decide not to apply the provisions of this article to activities listed in annex I.]

## **Article 7**

For article 7 substitute

### **Article 7**

#### **PUBLIC PARTICIPATION CONCERNING PLANS, PROGRAMMES AND POLICIES RELATED TO THE ENVIRONMENT**

Each Party shall make appropriate provisions for the public to participate during the preparation of 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 6, 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. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies related to the environment.

## **Article 9**

In paragraph 2, the last line of the first subparagraph for [and other relevant provisions of this Convention] read and, where so provided for under national law and without prejudice to paragraph 3 below, other relevant provisions of this Convention.

In paragraph 2, last subparagraph, first line for This provision read The provisions of this paragraph and before review insert preliminary

**Article 10**

In paragraph 1, for every year read every two years  
In the opening sentence of paragraph 2, delete the square brackets  
around on the basis of regular reporting by the Parties  
In paragraph 2, delete subparagraph (i)  
Renumber the remaining subparagraph  
Add at the end of the new subparagraph (i) (see CEP/AC.3/14, para. 10):  
, including the elaboration of an appropriate instrument concerning pollution  
release and transfer registers or inventories which could be annexed to this  
Convention.

For paragraph 3 substitute 3. [The Meeting of the Parties may, as  
necessary, establish financial rules on a consensus basis.]

**Article 13**

Delete the square brackets around the title and around the text of the  
article

**Article 14 bis**

For article 14 bis substitute

**Article 15**

**COMPLIANCE**

[The Parties, at their first meeting, shall consider the establishment of a  
procedure and institutional mechanism for determining compliance with the  
provisions of this Convention.][The procedure may include the consideration  
of communications from members of the public subject to the jurisdiction of a  
Party, who claim that their rights under this Convention have been violated.]  
Renumber the remaining articles accordingly

**Article 18 (new 19)**

In paragraph 2 after accession insert as from ... and for States and  
organizations read States and regional economic integration organizations

**Article 19 (new 20)**

In paragraph 1 delete the square brackets around sixteenth

**Article 20 (new 21)**

Delete square brackets around three

**Annex I**

In the title, replace ARTICLE 5, PARAGRAPH 1 with ARTICLE 6, PARAGRAPH 1  
(a)

Delete the square brackets around the text of the annex

In item 1, first line, for industry read sector

In item 1, indent 3, for output read input

In item 2, last indent and in item 3, last indent, for m3 read m<sup>3</sup>

In item 4(a)(iv) for isocyanides read isocyanates

In item 4(a)(vi) for Hologynic read Halogenic

In item 4, add a new letter (g) as follows: (g) Chemical installations in which chemical or biological processing is used for the production of protein feed additives, ferments and other protein substances.

In item 17 replace 25 kV by 220 kV

In item 19 add

[- Waste and dangerous substances:

(a) Provision of services in respect of the carriage of waste and dangerous substances, including hazardous and radioactive waste and substances, if the provision of such services requires a permit under national legislation;

(b) Transboundary movements of:

(i) Hazardous and radioactive waste,

(ii) Other waste;

(c) Internal movements, above any threshold which may be established, taking into account the objectives of this Convention, under national legislation of:

(i) Hazardous and radioactive waste,

(ii) Other waste:

provided that, in respect of the movements referred to in (b) and (c), a specific permit or decision is required under national legislation for each such movement or group of movements;]

[- Deliberate release into the environment, and contained use, of genetically modified organisms, where subject to a regulatory procedure.]

Add a new item 20 as follows : 20. Any activity not covered by paragraphs 1-19 where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation.

Delete item 20 and replace by the following [21. The provision of article 6, paragraph 1 (a), does not apply to any of the above projects undertaken exclusively or mainly for the development and testing of new methods or products for less than two years [unless they hold the potential for causing irreversible effect on environment and health]].

Add a new item as follows [22. Any change or extension of activities listed in this annex which may have a significant impact on the environment or meets the criteria set out in this annex shall be subject to article 6, paragraph 1 (a). Any change or extension of activities not listed in annex I shall be subject to article 6, paragraph 1 (b).]

## **Annex II**

Delete the square brackets around the title and around the text of this annex

Annex II

**OUTSTANDING ISSUES FOR CONSIDERATION AT THE TENTH SESSION OF THE WORKING GROUP**

**I. CATEGORY** (Issues broached during the ninth meeting but not yet concluded)

**The title**

Convention on Access to Environmental Information and Public Participation in Environmental Decision-making

[Convention on Citizens' Environmental Rights]

[Convention on Access to Environmental Information, Public Participation and Access to Justice]

**Article 2 (b)**

[(iv) The institutions of any regional economic integration organization referred to in article 16 which is a Party to this Convention; and]

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

**Article 4, paragraph 4**

(d) The confidentiality of commercial and industrial information, [if disclosure of the information would cause significant financial damage to an economic interest and] where such confidentiality is protected by law;

The aforementioned grounds for refusal shall be interpreted in a restrictive way taking into account [whenever possible][where possible] the public interest served by disclosure.

**Article 5, paragraph 9**

[9. Each Party shall progressively establish, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured computerized and publicly accessible database compiled through standardized reporting.] Such a system may 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.

**Article 6**

[Each Party, for reasons of national defence or security, may decide not to apply the provisions of this article to activities listed in annex I.]

**Article 8, the title**

**PUBLIC PARTICIPATION DURING THE PREPARATION OF EXECUTIVE REGULATIONS AND GENERALLY APPLICABLE LEGALLY BINDING RULES**

Or

**PUBLIC PARTICIPATION DURING THE PREPARATION OF GENERALLY APPLICABLE LEGALLY BINDING NORMATIVE INSTRUMENTS**

**Article 10, paragraph 3**

[3. The Meeting of the Parties may, as necessary, establish financial rules on a consensus basis.]

**Article 10, paragraphs 4 and 5**

[4. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State or regional economic integration organization entitled under article 16 to sign this Convention which is not a Party to this Convention, and any intergovernmental organization qualified in the fields to which this Convention relates, shall be entitled to participate [without the right to vote] [as observers] at the meetings of the Parties.

5. Any non-governmental organization, qualified in the fields to which this Convention relates, which has informed the Executive Secretary of the Economic Commission for Europe of its wish to be represented at a meeting of the Parties shall be entitled to participate [without the right to vote] [as an observer] unless at least one third of the Parties present in the meeting provide objections. The rules of procedure referred to in paragraph 2 (h) of this article shall provide for practical arrangements for the admittance procedure and other relevant terms.]

**Article 14**

In the third line of paragraph 4 replace: "they" by: "[Amendments to this Convention other than those to an annex]"

[5. (a) Any Party that is unable to approve an amendment to an annex to this Convention shall so notify the Depositary in writing within twelve months from the date of the communication of the adoption. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for its previous notification and, upon deposit of an instrument of acceptance with the Depositary, the amendments to such an annex shall become effective for that Party;

(b) On the expiry of twelve months from the date of its communication by the Depositary referred to in subparagraph (a), an amendment to an annex shall become effective for those Parties which have not submitted to the Depositary a notification in accordance with the provisions of subparagraph (a) above provided that at least [.....] Parties have not submitted such a notification;]

**Article 14 bis (will be 15 in the consolidated draft)**

[The Parties, at their first meeting, shall consider the establishment of a procedure and institutional mechanism for determining compliance with the provisions of this Convention.][The procedure may include the consideration of communications from members of the public, subject to the

jurisdiction of a Party, who claim that their rights under this Convention have been violated.]

**Annex I**

**Item 19**

[- Waste and dangerous substances:

(a) Provision of services in respect of the carriage of waste and dangerous substances, including hazardous and radioactive waste and substances, if the provision of such services requires a permit under national legislation;

(b) Transboundary movements of:

(i) Hazardous and radioactive waste,

(ii) Other waste;

(c) Internal movements, above any threshold which may be established, taking into account the objectives of this Convention, under national legislation of:

(i) Hazardous and radioactive waste,

(ii) Other waste:

provided that, in respect of the movements referred to in (b) and (c), a specific permit or decision is required under national legislation for each such movement or group of movements;]

[- Deliberate release into the environment, and contained use, of genetically modified organisms, where subject to a regulatory procedure.]

**Item 21**

[21. The provision of article 6, paragraph 1 (a) does not apply to any of the above projects undertaken exclusively or mainly for the development and testing of new methods or products for less than two years [unless they hold the potential for causing irreversible effect on environment and health]].

**Item 22**

[22. Any change or extension of activities listed in this annex which may have a significant impact on the environment or meets the criteria set out in this annex shall be subject to article 6, paragraph 1 (a). Any change or extension of activities not listed in annex I shall be subject to article 6, paragraph 1 (b).]

**II. CATEGORY** (Issues which have been proposed at the ninth session but not yet fully discussed)

**Preamble**

The proposal by REC to insert a new recital in the preamble:

"Recognizing the desirability for legislative bodies to include public participation in their proceedings, and calling upon them to uphold the principles of this Convention,"

**Article 2**

The proposal by the Environmental NGOs Coalition to add a new definition in article 2:

"Proposed activity" means an activity subject to a decision or decisions of a competent authority:

- (a) For construction;
- (b) For operation;
- (c) For construction and operation;

as the case may be, in accordance with an applicable national procedure or procedures; and "proposed activities" shall be construed accordingly.

**Article 3**

The proposal by the delegations of Hungary and the Netherlands to add a new paragraph in article 3:

"Within the scope of the relevant provisions of this Convention, the public shall have access to environmental information, and have the possibility to participate in environmental decision-making and access to justice without discrimination as to citizenship, nationality or domicile."

and to delete article 4, paragraph 1 (a), and article 9, paragraph 6.

In this context, the proposal by the delegation of Finland and the Environmental NGOs Coalition to add the following words to article 4, paragraph 1 (b), and article 9, paragraph 6 (or the proposed new paragraph in article 3) should be considered:

", where an organization has its registered seat or the effective centre of its activities in the territory of that Party."

**Article 6**

The proposal by the Chairman to add a new paragraph to article 6:

"A member of the public shall have the right to participate in environmental decision-making within the scope of this article without discrimination as to citizenship, nationality or domicile. "

Proposal by the delegation of the United Kingdom to add a new paragraph in article 6:

[1. Each Party, for reasons of national defence or security, may decide not to apply the provisions of this article to activities listed in annex I.]

or, alternatively, to add to annex I the following footnote:

Each Party may decide to exclude activities from this annex for reasons of national defence or security.

**Article 6, paragraph 6**

The proposal by EC:

Add to article 6, paragraph 6, in the second line after the words "upon request" the following words: ", where so required under national law,"

Add at the end of paragraph 6:

"As a minimum such information shall be:

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

(b) A description of the significant effects of the proposed activity on the environment;

(c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;

(d) A non-technical summary of the above;

(e) An outline of the main alternatives studied by the developer, if applicable.

Proposal of the delegation of the Netherlands to add to article 6 in addition to the proposal of the EC:

(f) Reports and advice, issued to the public authority by governmental or other advisory bodies, with regard to the assessment of the proposed activity.

**Article 6, paragraph 7**

The proposal by EC :

Add in the second line after the words "at a public hearing or inquiry" the words "with the applicant"

**Article 7**

The delegation of France proposes that the first line should read: "Each Party shall make appropriate practical provisions ..."

**Article 8**

The proposal by the delegation of Denmark :

Amend article 8, paragraph 1, as follows:

1. In the first sentence, delete "strive to"
2. In the first sentence after "public participation" insert "through organizations concerned, including non-governmental organizations"
3. Replace in the sentence the words "should be taken" by "shall be considered"

Annex III

POSSIBLE ELEMENTS FOR A DRAFT RESOLUTION ON ACCESS TO ENVIRONMENTAL INFORMATION AND PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING TO BE ADOPTED AT THE MINISTERIAL CONFERENCE IN **ÅRHUS, DENMARK, 24 JUNE 1998**

We, the Signatories to the ECE Convention on Access to Environmental Information and Public Participation in Environmental Decision-making, commit ourselves to

Resolving to strive for the entry into force of the Convention as soon as possible and to seek to implement the Convention to the maximum extent possible pending its entry into force and continue to cooperate in furthering the progressive development of policies and strategies related to access to environmental information, public participation in environmental decision-making and access to justice;

Recommending that the ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making endorsed at the Third Ministerial Conference "Environment for Europe" in Sofia, Bulgaria, on 25 October 1995, should be taken into account in the application of the Convention pending its entry into force;

Emphasizing that, besides the Governments, parliaments, regional and local authorities, parliamentarians and non-governmental organizations have a key role to play at the national, regional and local level in the implementation of the Convention;

Acknowledging that the Convention is an important element in the regional implementation of Agenda 21 and that its ratification will further the convergence of environmental legislation and strengthen democracy in Europe;

Recommending the Organization for Security and Co-operation in Europe to use this Convention as an important element in fostering security and stability throughout the European region;

Emphasizing the importance of training and education of officials and the public in order to increase the awareness and understanding of the possibilities of this Convention;

Calling upon public, private and international fund providers to give high priority to projects that aim to further access to environmental information, public participation in environmental decision-making and access to justice;

Calling for close contact and cooperation between the United Nations Economic Commission for Europe (ECE), other bodies in the "Environment for Europe" process and other relevant international governmental and non-governmental organizations on the issues of access to information, public participation and access to justice;

Inviting the ECE Committee on Environmental Policy to include the work on promoting the Convention's ratification pending its entry into force in its work programme;

Recognizing that the successful application of the Convention pending its entry into force depends upon adequate administrative and additional financial resources being made available to support and maintain the initiatives necessary to achieve this goal and calling upon Governments to make voluntary financial contributions to this process so that sufficient financial means are available to carry out the programme of activities of the ECE Committee on Environmental Policy;

Inviting the Committee on Environmental Policy to promote the Convention and, in this respect, to undertake activities on such issues as may be deemed important pending the entry into force of the Convention. The Committee may, with the necessary assistance of relevant experts, wish to examine the possibilities for strengthening the ability of future Parties to implement the obligations under the Convention and, with this in mind:

(a) Establish an advisory board of prominent experts, including experts from non-governmental organizations, to assist in the process of ratification and implementation of this Convention;

(b) Adopt a work-plan, including the organization of workshops, seminars and informal meetings, draft guidelines and/or handbooks on key points of the Convention and widely disseminate general information, e.g. in the form of booklets and information leaflets introducing this Convention;

Inviting any other State, not member of ECE, that is a Member of the United Nations to accede to this Convention;

Encouraging other international organizations, including other United Nations regional commissions, to develop appropriate arrangements relating to access to environmental information and public participation in environmental decision-making, drawing, as appropriate, on the Convention.