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COMMITTEE ON ENVIRONMENTAL POLICY

Working Group for the preparation
of the first meeting of the Parties to
the Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters
(Second meeting, 21-24 May 2002)

REPORT OF THE MEETING

1. The second meeting of the Working Group for the preparation of the first meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters took place in Geneva, Switzerland, from 21 to 24 May 2002.
2. The meeting was attended by representatives of the Governments of Armenia, Austria, Belarus, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Monaco, Netherlands, Norway, Poland, Republic of Moldova, Romania, Spain, Sweden, Tajikistan, the former Yugoslav Republic of Macedonia, United Kingdom, United States and Yugoslavia.
3. The Commission of the European Communities was represented.
4. The United Nations Environment Programme's Regional Office for Europe (UNEP/ROE) and UNEP/GRID-Arendal were represented.
5. The following regional and non-governmental organizations (NGOs) were represented: Earthjustice Legal Defense Fund, European ECO Forum, GLOBE Europe, Nature Protection Team and the Regional Environmental Center for Central and Eastern Europe (REC).
6. At the invitation of the secretariat, the Chairperson of the Advisory Board to the Aarhus Convention, Mr. Willem Kakebeeke (Netherlands), also attended the meeting.

7. The Chairperson of the Working Group, Mr. Francesco La Camera, opened the meeting.

I. ADOPTION OF THE AGENDA

8. The provisional agenda for the meeting (CEP/WG.5/2002/1) was adopted without amendment.

II. RATIFICATION STATUS AND PROSPECTS

9. The secretariat provided the latest information on the number of ratifications. Since the first meeting of the Working Group, three more States had become Parties to the Aarhus Convention. These were Lithuania (instrument of ratification deposited on 28 January 2002), Poland (instrument of ratification deposited on 15 February 2002) and Malta (instrument of ratification deposited on 23 April 2002). There were currently 20 Parties to the Convention.

10. The secretariat informed the Working Group that a State's instrument of ratification, acceptance, approval or acceding should be deposited before 23 July 2002 in order for that State to be entitled to attend the first meeting of the Parties as a Party enjoying the full rights accorded to Parties (e.g. voting), due to the 90-day period specified in the Convention between the date of deposit of the instrument and the date of entry into force of the Convention for that State. A State or regional economic integration organization depositing its instrument of ratification before the first meeting of the Parties but after 23 July 2002 would not have any special status distinguishing it from other non-Parties unless the Meeting of the Parties decided to accord such States or organizations a special status, which could be done provided it did not create any conflict with the rules of procedure or with the Convention itself.

11. Delegations from States not yet Party to the Convention but intending to become so were invited to briefly inform the Working Group of when they expected to ratify, accept, approve or accede to the Convention. The representatives of Belgium, France and the Netherlands stated that they would strive to ratify in time to be Parties at the first meeting of the Parties. Croatia, the Czech Republic and Finland hoped to ratify by the end of 2002 but did not expect to do so in time for the first meeting of the Parties. The delegations of Bulgaria, Norway, Spain, Sweden, the United Kingdom and Yugoslavia expected to do so some time in 2003, and Austria and Germany in 2003 or 2004. In the light of this information, it could be expected that there would be at least 20-23 Parties by the time of the first meeting of the Parties.

III. ORGANIZATIONAL PREPARATIONS FOR THE FIRST MEETING OF THE PARTIES

Programme of events

12. The Chairperson informed the Working Group that due to some technical problems the host country for the first meeting of the Parties, Italy, had had to postpone the meeting until 21-23 October 2002, i.e. one week later than previously announced.

13. The following programme of events was provisionally agreed:
- 21 October, morning: opening statements, adoption of the agenda, election of chairperson, keynote and other statements (only Ministers and deputy Ministers, non-governmental organizations and high-level representatives of intergovernmental organizations), high-level panel discussion(s)
 - 21 October, afternoon: possible continuation of panel discussion(s), adoption of ministerial statement, press conference
 - 21 October, evening: formal dinner
 - 22 October, morning: Statements by other delegations (Parties, non-Parties, IGOs and NGOs)
 - 22 October, rest of morning and afternoon, and 23 October: remaining agenda items.

14. The secretariat informed the Working Group that it had been notified by Interactive Health and Ecology Access Links (IHEAL), an NGO network dedicated to promoting electronic access to environmental and health information, that its proposal to organize a side event on electronic information tools might not go ahead as originally planned, due to problems in raising the necessary funds. The European ECO Forum confirmed that this was the case but indicated that a smaller event might be possible.

15. The European ECO Forum informed the Working Group of provisional plans to hold an NGO conference in Lucca, Italy, immediately before the meeting of the Parties.

Publicity and promotional activities

16. Following the recommendation of the open-ended meeting of the Bureau, a competition to design a logo for the Convention had taken place during April and May 2002. Some 20-25 proposals had been submitted for consideration. The winner would be announced when a final decision was made. The logo would be used in promotional materials such as posters, postcards, lapel pins, pens, T-shirts and other items, to be produced by the secretariat in cooperation with the host country.

17. Press releases to promote and publicize the event would be issued in advance by the secretariat and the host country and one or more press conferences would be organized in Lucca. It was proposed to organize simultaneous press conferences throughout Europe in order to generate more national media interest in the issues. To this end, the host country undertook to contact its permanent representations and embassies in capitals in Europe concerning the meeting, requesting them to be supportive and open to invitations to such press conferences. It was also proposed to use the occasion of the World Summit on Sustainable Development and its preparatory meetings to promote the Convention and the first meeting of the Parties.

Practical arrangements

18. The host country informed delegations that they would be contacted in the near future by the agency contracted to manage the logistics in Lucca. Delegations were advised to respond rapidly, as Lucca was a very small town and hotel rooms were scarce, and to provide an early indication of the number of participants at the meeting and the level of participation (ministerial or otherwise). Some publicity and tourism material

concerning Lucca was made available to delegates for information.

19. The secretariat reminded the Working Group that delegations from Parties and prospective Parties would need to obtain the necessary credentials in due time.

Financial resources

20. Delegations from donor countries were invited to inform the secretariat of any possibilities of contributing towards covering the costs of participation in the meeting of the Parties and in the preparatory process of prospective participants requiring, and eligible for, financial support, so that as many countries as possible would share the burden. In the case of participation at ministerial level, three persons (including the Minister) from eligible countries would be funded.

Schedule of preparatory meetings

21. It was decided to hold a third meeting of the Working Group on 8-10 July 2002 in Croatia. On 7 July 2002, a task force would meet in the same location to discuss the annex(es) to the draft decision on reporting requirements on the basis of a document to be prepared by the secretariat. Croatia, as host country, would confirm the precise venue by the end of May or in early June.

22. The small ad hoc group of lawyers established to attempt to resolve the outstanding issues concerning the draft decision on pollutant release and transfer registers (see para. 40 below) would meet on the occasion of the fifth meeting of the Working Group on Pollutant Release and Transfer Registers (Geneva, 24-28 June 2002). The group would also meet on 7 July 2002 in Croatia if necessary.

IV. SUBSTANTIVE PREPARATIONS FOR THE FIRST MEETING OF THE PARTIES

Provisional agenda and list of documentation

23. The secretariat informed the Working Group that due to a heavy workload and some uncertainties concerning the content of the first meeting of the Parties, it had not managed to prepare a provisional annotated draft agenda for the first meeting of the Parties. The document would be prepared in time for the third meeting of the Working Group, taking into account the outcome of the second meeting.

High-level panel discussion and ministerial statement

24. It was agreed that a high-level panel discussion should take place during the first day of the meeting of the Parties involving the participation of Ministers, top United Nations and European Union officials and representatives of non-governmental organizations. Invitations might also be sent to representatives from countries outside the ECE region. Taking note of the discussions in the open-ended meeting of the Bureau, the Working Group decided that the overall theme of the panel discussion should be the implementation of the Convention in practice ('making Aarhus work'). Within this overarching theme, the panellists would be invited to deliver a keynote address on a

related issue, which could be human rights and the environment (or environmental rights); the practical experience of the application of the Convention; the relevance of the Aarhus Convention to efforts to implement principle 10 of the Rio Declaration on Environment and Development in other regions and the follow-up to the World Summit on Sustainable Development; or the links between poverty and environmental democracy.

25. The host country invited delegations to submit names of possible keynote speakers and possible themes for keynote addresses as soon as possible in order to make the necessary arrangements.

26. It was agreed that a ministerial declaration should be prepared for adoption by the Ministers at the first meeting of the Parties. It should be a concise document with some clear political statements. Delegations were invited to send written comments to the secretariat by e-mail before 7 June 2002. On the basis of the comments received and its own ideas, the secretariat would prepare a first draft to be discussed at the Working Group's third meeting in July. Given the short deadline, the document would probably be available only in English with an unofficial Russian translation. It was expected that the draft statement could only be finalized in Lucca, not least because there might be a wish to make reference to the outcome of the World Summit on Sustainable Development (see paras. 63-65).

Rules of procedure and compliance mechanism

27. At the first meeting of the Working Group, three outstanding issues concerning the draft rules of procedure and the compliance committee had been identified. For the rules of procedure, the question was whether representatives of NGOs should be present in the Bureau of the Meeting of the Parties and, if so, in what capacity. For the compliance mechanism, it remained to be resolved whether the committee should be a committee comprised of Parties to the Convention or a committee comprised of independent experts serving in a personal capacity and, if the latter, whether NGOs as well as Parties should be entitled to nominate experts for election by the Meeting of the Parties. The third question was whether the opt-out possibility concerning communications from the public with respect to a Party's compliance should be indefinite in time or limited to a specific time period of, for instance, four years.

28. The Chairperson presented a compromise proposal in an attempt to solve the three issues in one 'package'. The content of the proposal was that one representative of NGOs established for the purpose of, and actively engaged in, promoting environmental protection and sustainable development should attend meetings of the Bureau as an observer, and that the NGOs may be required to nominate three candidates for the Meeting of the Parties to elect from. The Chairperson and the Vice-Chairpersons of the Meeting of the Parties should be elected from among the Parties. The compliance committee should comprise independent experts to be nominated by Parties, Signatories and NGOs and elected by the Parties, and the opt-out option should be limited to four years.

29. The implications of this proposal by the Chairperson for the texts of the two draft decisions prepared by the Working Group on Compliance and Rules of Procedures are indicated in annexes I and II to this report. Delegations were invited to consult over this text in their capitals in advance of the third meeting of the Working Group with a view to

finding a consensus at that meeting.

30. The Chairperson of the Working Group on Compliance and Rules of Procedures, Mr. Alistair McGlone (United Kingdom), indicated that it would probably be necessary for a small group of lawyers to go through the texts of the draft rules of procedure and the draft compliance mechanism to ensure consistency in the texts and make other non-controversial changes. It was agreed to follow this approach. To save time and resources, it was furthermore agreed that this group would work only electronically. Delegates were invited to indicate their interest in participating in this task as soon as possible to Mr. McGlone, who was invited to lead the work and report back to the Working Group at its next meeting.

31. The Working Group had a brief discussion on the procedures for nominating candidates to the compliance committee in case it were decided that the committee should comprise independent experts. It was broadly recognized that the Parties would need to have sufficient information concerning the candidates and their qualifications in order to make an informed choice, and that it would be desirable for such information to be circulated in the official languages in due time in advance of the relevant meeting. The Chairperson and the secretariat were requested to come forward with a proposal on this point to be discussed at the next meeting of the Working Group.

32. The possibility of postponing the election of the committee until a subsequent meeting of the Parties was mentioned, particularly having regard to the clause in the draft decision stipulating that the decision would only become effective on the thirtieth day following its adoption. However, there was general support for electing the committee at the first meeting of the Parties so that it could commence its work as soon as possible. Some delegations expressed concern at the notion contained in the draft decision that only nationals of Parties could be considered as candidates for the committee, given that under this option its members would be serving in a personal capacity.

33. It was agreed to return to the outstanding issues of the two draft decisions at the next meeting of the Working Group.

Reporting regime

34. The secretariat introduced the draft decision on reporting requirements (CEP/WG.5/2002/9), which had been prepared taking into account the discussions at the first meeting of the Working Group, the comments and proposals submitted by the United Kingdom and the World Resources Institute (WRI), and the discussions at the open-ended meeting of the Bureau. The draft decision would be completed with an annex or annexes on the reporting format. The objective of the decision would be to establish a simple reporting system to ensure that countries would not find it overly burdensome to report and would therefore not have difficulties with complying with the reporting requirements. The reports should provide sufficient information to the Parties, the public, academia and the compliance mechanism.

35. It was agreed that the full implications of the draft decision could not be assessed until the annex(es) on the reporting format(s) was (were) available, and that it would therefore be necessary to return to the draft decision at the next meeting, which would take

place immediately after the task force meeting to examine the reporting format (see para. 21 above). However, some preliminary comments on the draft decision were made and some changes were agreed:

(a) A number of delegations questioned the usefulness of distinguishing between ‘implementation reports’ and ‘activity reports’ as envisaged in the draft decision. They preferred the implementation framework and the intersessional activities to be included as sections within a single report. Others preferred to describe the implementation framework in one report, which would be submitted to the Meeting of the Parties only once for each Party and only updated when necessary, and to describe the activities undertaken in that country during the intersessional period to promote the application of the Convention in another report to be submitted to the Parties at every meeting. The format for the second report would be quite open. As the formats for the reports were not yet available, it was agreed to leave the text unchanged for the time being;

(b) Concerning paragraph 3 of the draft decision, concerns were raised about the French version of the document. The reports should be prepared through a transparent and consultative process involving the public, but not through a participatory process as indicated in the French version;

(c) It was agreed that the report should be submitted electronically and on paper, which should be reflected in paragraph 4;

(d) In paragraph 5, it was suggested to change “analytical” to “synthesis”. As a consequence, in paragraph 8 (a) “summary report” should also be changed to “synthesis report”. It was emphasized that the secretariat should not be expected to make a value judgement of each national implementation performance in the report, but rather to detect general trends and challenges; on the other hand, it should be free to make an independent and objective assessment of the situation;

(e) The question of which reports should be translated into the three official languages needed to be addressed more explicitly in the draft decision. There was a general feeling that in order to be of value to the Meeting of the Parties, the synthesis report and the implementation report would at least need to be translated;

(f) In paragraph 7, it was agreed that organizations could be invited to also submit information on their “practical experiences with the implementation of the Convention”.

(g) Finally, it was agreed that it should not be the secretariat but the Meeting of the Parties itself which would keep the format for reporting under review and that paragraph 8 (c) of the draft decision could therefore be deleted.

Clearing-house mechanism and capacity-building service

36. The secretariat presented the draft decision on a clearing-house mechanism and capacity-building service (CEP/WG.5/2002/7) and explained the background, namely that such a mechanism and service were being established in the secretariat as a joint project between UNECE, UNEP/ROE and UNEP/GRID-Arendal. The clearing-house mechanism

would aim at facilitating the match between project proposals concerning the implementation of the Convention and potential financing, and at collecting and disseminating all types of information linked to the Convention, including national strategies for implementation and relevant national legislation as well as reports and results of previous actions. The capacity-building service was expected to result in an accelerated implementation process for the Aarhus Convention and tangible improvements in the levels of access to information, public participation and access to justice in the recipient countries.

37. The Working Group welcomed and actively supported the secretariat work on this idea and decided to provisionally accept the draft decision with the following changes:

(a) Insert a new paragraph before paragraph 1 as follows:

“ 1. Request the secretariat to continue its efforts within the resources available, to develop the clearing-house mechanism and capacity-building service, in cooperation with the other partners” and renumber the subsequent paragraphs;

(b) Insert a new paragraph as follows:

Invites the United Nations Environment Programme - Regional Office for Europe, the Regional Environmental Center for Central and Eastern Europe, and the World Conservation Union (IUCN) Environmental Law Center through their Joint Environmental Law Service (JELS), to continue the cooperation with the secretariat on capacity-building activities,

(c) Insert “, Signatories” after the word “Parties” in paragraphs 1, 2 and 4; and

(d) Insert “continuously reviewing its effectiveness,” after “service,” in paragraph 5.

National focal points

38. The Working Group discussed the draft decision on national focal points (CEP/WG.5/2002/8), prepared by the secretariat in consultation with the Bureau. The Working Group agreed that the draft decision could be presented to the Meeting of the Parties with two amendments: in order to make a distinction between national focal points who should be informed about all meetings and activities under the Convention and would be really acting as a single focal point from persons involved in one specific process, it was agreed to make the following changes:

(a) In paragraph 1, insert “contact persons” after “as appropriate”;

(b) In paragraph 2, move “contact persons” to follow “as appropriate”.

Pollutant release and transfer registers

39. The secretariat presented a new draft decision on pollutant release and transfer registers (CEP/WG.5/2002/12), which had been prepared following consultations at the

open-ended meeting of the Bureau. The changes from the previous draft (CEP/WG.5/2001/3) mainly concerned two issues:

(a) First, taking account of the relevant provisions of the Convention and having regard to the draft rules of procedure, the new text made more explicit the decision to hold an extraordinary meeting of the Parties in Kiev, May 2003, for the purpose of adopting the protocol. The proposed extraordinary meeting of the Parties could also be used to address other issues requiring the attention of the Meeting of the Parties between its first and second meeting;

(b) Second, the decision of the Committee on Environmental Policy that the protocol should be drafted so as to be open to non-Parties to the Convention and non-ECE States (ECE/CEP/80, para. 31) was reflected in paragraph 3 of the new text.

40. The new elements concerning the extraordinary meeting of the Parties were uncontroversial. However, while some delegations were in favour of reflecting the Committee's decision concerning the openness of the protocol to adherence by non-Parties and non-ECE States in the draft decision of the Meeting of the Parties, others had significant concerns about the legal, financial and organizational implications of such an approach. For this reason it was decided that the paragraph in question should be put in square brackets for the time being. In an attempt to resolve the issue, it was agreed to convene an open-ended, ad hoc expert group under the chairmanship of Mr. Maas Goote (Netherlands) to analyse the legal, administrative, institutional, practical and financial implications, of the protocol on PRTR being open to all States and regional economic integration organizations, whether or not they were Parties to the Aarhus Convention, and to suggest feasible solutions to such implications. Mr. Goote would report the findings of this work to the Working Group at its next meeting.

Report of the Working Group on Genetically Modified Organisms

41. The secretariat briefly updated the Working Group on progress in the Working Group on Genetically Modified Organisms (GMOs). After the second meeting of the Working Group on GMO, a drafting group had met and prepared new draft guidelines on GMOs for adoption by the Meeting of the Parties (CEP/WG.5/AC.3/2002/7) and the secretariat had prepared a new draft decision for adoption by the Meeting of the Parties (CEP/WG.5/AC.3/2002/8). Both of these documents would be considered, further developed and, if possible, finalized at the third meeting of that Working Group, scheduled to take place in Geneva on 17-19 June 2002.

42. It was agreed to review the outcome of the third meeting of the Working Group on GMOs and deal with any outstanding issues at the third meeting of the Working Group for the preparation of the first meeting of the Parties.

Electronic information tools

43. Austria, as the lead country of the Task Force on Electronic Tools, introduced the draft decision on electronic information tools (CEP/WG.5/2002/10).

44. The delegation of Bulgaria indicated its willingness to lead the proposed new task force. The Working Group welcomed this offer.

45. The Working Group decided to provisionally accept the draft decision with the following changes:

(a) In paragraph 1, a footnote should be inserted with the following text: “CEP/WG.5/2001/4 at <http://www.unece.org/env/pp/electronictools.htm>”;

(b) A new paragraph should be inserted between paragraphs 1 and 2 to read as follows: “Invites Parties and non-Parties to develop a national web site with legal and practical information on issues related to the Convention at national level, linked to the official UNECE Aarhus Convention web site;”

(c) At the end of paragraph 2, the words “to facilitate the implementation of the Convention” should be inserted;

(d) In paragraph 3 (d), it was agreed to make a stronger link to the clearing-house and capacity-building service, on the understanding that this might have to be reviewed in the light of the outcome of the discussion on that issue. The new wording for paragraph 3 (d) would be: “Identify and where possible contribute to the implementation of capacity-building measures in cooperation with the capacity-building service and the clearing-house mechanism”;

(e) At the end of paragraph 3 (e), add “and publications programmes of authorities”;

(f) In the light of the offer by Bulgaria to lead the task force, paragraph 4 would be completed accordingly.

Finally, delegations that felt that the mandate of the task force should be more precisely defined were invited to propose specific texts.

Access to justice

46. The secretariat briefly introduced the draft decision contained in document CEP/WG.5/2002/11, which had been prepared taking into account the discussions at the open-ended meeting of the Bureau. The draft decision was based on the assumption that the draft handbook on access to justice would be finalized in time to be presented to and endorsed by the Meeting of the Parties. The handbook would mainly be addressed to government officials in charge of the implementation of the access to justice pillar of the Convention. The draft decision therefore envisaged that the task force should assess and address the needs of other target groups. Furthermore, the task force would continue the collection of case studies which the task force established under the Meeting of the Signatories had started and would identify possible measures to support the implementation of article 9, paragraphs 3, 4 and 5. Finally, the proposal envisaged that the task force would report on its activities to the Working Group of the Parties, which could thereupon decide to submit draft recommendations to the Meeting of the Parties.

47. The delegations of the United Kingdom and REC informed the Meeting that a project to allow REC to finalize the draft handbook in time for the first meeting of the Parties had been approved. As time was very limited, delegations were invited to send their comments on the draft handbook and possible new case studies to REC as soon as possible so that the text could be finalized by mid-July to allow printing in due time before the meeting of the Parties.

48. Some delegations considered that it would be useful if the collection of case studies would rather be a collection of examples of good practices and that this should be combined with information on the different legal systems in place in different countries to make better use of the examples of good practices. The Working Group agreed that it would be more appropriate to ask the task force to identify possible further activities rather than measures. Some delegations suggested that it would be useful also to consider the experience with access to justice in relation to articles 7 and 8 of the Convention. The Working Group considered that it would be premature to decide on the body to which the task force should report and decided that the option of reporting directly to the Meeting of the Parties should be kept under consideration alongside that of reporting to the "Working Group of the Parties" for the time being.

49. The delegation of Belgium informed the Working Group of its provisional interest in taking the lead of the task force, but was not in a position to confirm this interest at this stage.

50. The Working Group agreed on the following changes to the draft decision on access to justice:

(a) In paragraph 3, subparagraph (a), after "address" insert "the impact of the costs and delay on the effectiveness of access to justice and" and after "environmental lawyers" insert ", academia";

(b) For paragraph 3, subparagraph (b), read: "Continue the examination of good practices and provide explanatory background information on the different legal systems, accessible through the Convention's web site;"

(c) In paragraph 3, subparagraph (c): for "measures" substitute "further activities";

(d) For paragraph 3, subparagraph (d), read: "Report on its activities to the [Working Group of the Parties][Meeting of the Parties];"

(e) In paragraph 4, between the square brackets, insert "Belgium".

Procedures for the preparation, adoption and monitoring of work programmes and the work programme and budget for 2003-2005

51. The secretariat introduced two informal papers (English only), one on the preparation, adoption and monitoring of work programmes and the other on a proposed work programme for the period 2003-2005. The papers could be regarded as drafts of formal documents which would be prepared in the three languages for the third meeting of

the Working Group. The drafts had been prepared on the basis of the discussions at the first meeting of the Working Group as well as at the open-ended Bureau meeting and taking account of a proposal prepared by the delegation of the United Kingdom.

52. The work programme would include all activities undertaken directly under the auspices of the Convention. It would distinguish between core and non-core activities. For each activity, the necessary financial resources from the Convention trust fund would be estimated and these estimations would make up the budget of the Convention. It would balance the goal of predictability and transparency in determining activities and setting priorities with the need for a certain amount of flexibility in the implementation of the work programme.

53. In the brief discussion in the Working Group, most delegations found that the informal papers provided a good basis for further work. The issue was raised as to whether the budget should also include the resources provided by or needed from the United Nations regular budget, although the usefulness of this was questioned by some delegations as the Meeting of the Parties would have no influence on this budget. It was agreed to return to this issue and the work programme for the period 2003-2005 at the next meeting of the Working Group on the basis of a more detailed work programme, including an estimation of costs for the budget to be prepared by the secretariat.

Financial arrangements

54. The secretariat introduced the draft decision on financial arrangements, contained in the annex to document CEP/WG.5/2002/4. The decision had been prepared on the basis of the guiding principles agreed by the Working Group at its first meeting and taking account of the discussions at the open-ended Bureau meeting. The financial arrangements would be voluntary and based on the idea that the total budget of the Convention would be divided into a number of 'shares' of equal size. Parties, Signatories and other States would then be invited to "buy" a share of the budget, without this giving them any additional decision-making power. In the longer term, the levels of contributions should be based on the United Nations scale of assessments. Consideration would be given to establishing financial arrangements on a mandatory basis.

55. Most delegations broadly supported the draft decision and the establishment of the interim voluntary scheme. The following points were made during the discussion:

(a) It was suggested that, depending on the size of each share, it should be possible to "buy" a share jointly with other countries, which could be reflected by inserting "individually or jointly" in paragraph 3 after the word "contribute";

(b) It was also suggested that other relevant activities could be supported in countries with economies in transition and that paragraph 7 should be amended accordingly with the insertion of "and other relevant activities" after "Aarhus Convention".

(c) Some delegations questioned the need for or desirability of establishing a task force to consider the feasibility of and modalities for a system based on the United Nations scale of assessment and to explore the possibility of establishing financial

arrangements on a mandatory basis, and argued that this would already be covered by paragraph 10. As this was the basis of the compromise to establish a voluntary scheme, other delegations found the establishment of the task force indispensable. It was agreed that the Chairperson with the assistance of the secretariat would attempt to find softer language for paragraph 9.

Intersessional body

56. The secretariat introduced the proposal for a draft decision on the establishment of an intersessional body (CEP/WG.5/2002/6). The proposal had been prepared in consultation with the Bureau at its open-ended meeting.

57. The Working Group agreed that an intersessional body should be established. For several delegations, their wish to establish such a body was expressly linked with their preference that the Meeting of the Parties should not meet more than once every two years.

58. The intersessional body should oversee the implementation of the work programme as adopted by the Meeting of the Parties and it should have the specific mandate to oversee and direct the activities of the other subsidiary bodies established by the Meeting of the Parties, keep under review the need for amending the Convention and, to this end, prepare proposals to the Meeting of the Parties, and carry out any other tasks requested by the Meeting of the Parties. It should organize its work effectively within the means available and the officers and the Bureau of the Meeting of the Parties should be in charge of the Working Group. Finally, some delegations considered that a better name for the intersessional body could be found and delegations were invited to come forward with proposals.

59. On this basis, the Working Group agreed provisionally on the draft decision with the following changes:

- (a) In the third preambular paragraph, delete “decision-making”;
- (b) In paragraph 1, after “oversee” insert “the implementation of the work programme;” and delete the rest of the paragraph;
- (c) In paragraph 2, delete subparagraph (a);
- (d) In paragraph 2 (b), delete: “, including documentation such as draft decisions and future draft work programmes”;
- (e) For paragraph 2 (c) read: “(b) Oversee and direct the activities of subsidiary bodies established by the Meeting of the Parties;”
- (f) Delete paragraph 2 (d);
- (g) In paragraph 2 (e), after “for” delete “adapting or”;
- (h) In paragraph 2 (f), replace “more effective implementation and further development” by “achievement of the purposes” and insert “and” at the end of the

subparagraph;

(i) Insert a new subparagraph: “Undertake any other duties as requested by the Meeting of the Parties;”

(j) In paragraph 3, delete “as often as it deems necessary but” and after “work” insert “, within the means available,”;

(k) In paragraph 4, after “the officers” insert “and the Bureau” and replace “or to designate substitutes” by “unless otherwise decided by the Meeting of the Parties”.

Report on the preparation of a protocol on strategic environmental assessment to the Espoo Convention

60. The Vice-Chairperson of the Espoo Convention’s Working Group on the Protocol on Strategic Environmental Assessment (SEA), Mr. Jerzy Jendroska, informed the Meeting of the progress of that Working Group in developing the SEA protocol. He stressed that the protocol would not address public participation in the strategic decision-making process in its totality but only in strategic environmental assessment. He pointed out that many issues remained unresolved and there were problems with addressing the issue of access to justice.

61. The Chairperson of the Working Group urged delegates to either participate in the SEA protocol negotiations or to strengthen cooperation with their colleagues who were already participating, so as to make their expertise on the Aarhus Convention available to the process and to raise awareness of what had already been achieved.

62. The European ECO Forum expressed its concern about the low level of participation of Aarhus Convention experts in the SEA protocol negotiations as well as its regret over the lack of access to justice in the proposed protocol. It also mentioned that SEA and, therefore, public participation were not required by the protocol in the preparation of legislation and executive regulations despite the widespread public participation in such decision-making processes in Central and Eastern Europe.

Preparatory process for the World Summit on Sustainable Development and further steps to promote principle 10 of the Rio Declaration

63. The Chairman informed the Working Group about the preparatory process for the World Summit on Sustainable Development. The fourth high-level preparatory committee meeting would take place in Bali, Indonesia, from 27 May to 7 June 2002. The expectations were that the Meeting would be decisive in shaping the output of the Summit. This would include an action plan for the implementation of Agenda 21, a ministerial declaration, a document on good governance and sustainable development and so-called type-2 partnership initiatives. The European Union was working to promote the Aarhus Convention principles in the last two outputs.

64. The European ECO Forum informed the Meeting that environmental NGOs were working on the globalization of the Aarhus principles and would hold a side event in Bali.

65. The delegation from Denmark drew the attention of the Working Group to the fact that at the recent Conference of the Parties to the Convention on Biological Diversity, more than 125 Ministers and Deputy Ministers had agreed to a Ministerial Declaration which “welcomes and supports the results of the process on International Environmental Governance”.

Public participation in international forums and the links between the Aarhus Convention and other ECE environmental instruments

66. At its eighth session, the Committee on Environmental Policy had agreed that two analyses should be carried out, the first on the links between the Aarhus Convention and the other ECE environmental conventions and protocols, the second examining good practices in public participation in international forums. The second study would be reviewed by a task force and might serve as a basis for the development of guidelines on public participation in international forums, for possible adoption at the Kiev Ministerial Conference (ECE/CEP/80, paras. 34-35).

V. ACTIVITIES PROMOTING THE IMPLEMENTATION OF THE CONVENTION

67. The secretariat briefly informed the Working Group of the activities to promote the implementation of the Convention, including a workshop for the five Central Asian ECE member States scheduled to take place in Dushanbe, Tajikistan, on 4-7 June 2002.

68. The secretariat also informed about progress in the joint project with the United Nations Institute for Training and Research (UNITAR) on drawing-up a guidance document for self-assessment of the implementation of the Convention. Information on the project had recently been sent to all focal points, inviting countries to express their interest to be selected as a pilot project country.

VI. ANY OTHER BUSINESS

69. The Working Group briefly touched upon the issue of future meetings of the Parties. The secretariat informed the Working Group of the provisional plans for the extraordinary meeting of the Parties, scheduled for Kiev, May 2003. It was clear that the Ministerial Conference would have a big agenda with the adoption of at least three legally binding instruments and that it could not be expected that the Aarhus Convention's extraordinary meeting of the Parties would be allocated more than half a morning's session.

70. As for the next ordinary meeting of the Parties, it seemed premature to set the date and venue. However, several delegations assumed that there would be an interval of two years between meetings of the Parties, according to article 10, paragraph 1, of the Convention, at least for the first meetings. It was agreed that the second meeting of the Parties could take place between the autumn of 2004 and the spring of 2005. In setting the date, consideration should be given to the rationalization process concerning the scheduling of all high-level ECE environmental meetings, as well as to the preferences of the host country. Delegations were invited to consider whether their governments might be

in a position to host the second meeting of the Parties.

71. Austria informed the Working Group of a symposium on the issue of “Environmental Mediation in Europe – New Methods of Conflict Resolution and Public Participation”, which had taken place in Vienna in November 2001. Further information, as well as the study which had formed the basis for the symposium, could be found on www.environ-mediation.net.

VII. ADOPTION OF THE REPORT

72. At the time of the adoption of the report, the delegation of the United States, with the support of one other delegation, requested that the table presented by the Chairperson of the Working Group in connection with his compromise proposal for the outstanding issues on the draft rules of procedure and the compliance mechanism (see paras. 28-29 above) should be included in the report, citing normal ECE practice. The Vice-Chairperson of the Working Group, Mr. Veit Koester, acting as Chairperson in the absence of Mr. La Camera, who had had to depart before the end of the meeting, observed that in his opinion it would not be a good idea and could create confusion, as the table in question had been replaced by the specific textual proposal contained in annexes I and II. Some delegations supported this view. The Vice-Chairperson then proposed not to accept the proposal by the delegation of the United States and no delegation objected. However, the United States entered a reservation concerning the adoption of the report.

73. The Working Group then adopted the report, noting the reservation of the United States and on the understanding that the French- and Russian-speaking delegations would reserve their positions until the report was available in French and Russian as well. The Vice-Chairperson thanked the Working Group for the constructive atmosphere and the secretariat for its efficient assistance and closed the meeting.

Annex I

COMPROMISE PROPOSAL OF THE CHAIRPERSON OF THE WORKING GROUP TO AMEND THE DRAFT RULES OF PROCEDURE AS CONTAINED IN DOCUMENT CEP/WG.5/AC.1/2001/2, ANNEX I, AS AMENDED BY CEP/WG.5/AC.1/2001/6, ANNEX I

Rules 18 and 20 to 22 should read as follows:

Rule 18

1. At each ordinary meeting, a chairperson and two vice-chairpersons shall be elected from among the representatives of the Parties present at the meeting. They shall serve as the officers of the Meeting until their successors have been elected.
2. The Chairperson shall participate in the meeting in that capacity and shall not at the same time exercise the rights of a representative of a Party. In such a case, the Chairperson or the Party concerned may designate another representative who shall be entitled to represent the Party in the meeting and to exercise its right to vote.

Rule 20

If the Chairperson is temporarily absent from a meeting or any part thereof or is unable to complete his or her term of office or to perform his or her functions, a Vice-Chairperson shall act as Chairperson.

Rule 21

At the outset of each ordinary meeting, the Chairperson elected at the previous ordinary meeting or, in his or her absence, the Vice-Chairperson referred to in rule 20 shall preside until the Meeting has elected a new chairperson.

Rule 22

1. A bureau shall be established consisting of eight members, as follows:
 - (a) The officers referred to in rule 18;
 - (b) Representatives of other Parties;
 - (c) A representative of non-governmental organizations established for the purpose of, and actively engaged in, promoting environmental protection and sustainable development who shall attend bureau meetings as an observer.
2. At each ordinary meeting of the Parties, following the election of the officers, the remaining members of the Bureau shall be elected by the Parties present at the meeting, taking into account the need for a balanced representation of the different geographical subregions of ECE.

3. The representative of the non-governmental organizations referred to in paragraph 1 (c) shall be nominated by those organizations. The Meeting may require the nomination of three candidates from this category, if requested by the Chairperson or any representative of a Party.

4. Except for the first meeting of the Parties, when members shall serve from the beginning of the meeting, all the members of the Bureau shall serve from the end of the ordinary meeting at which they are elected until the end of the next ordinary meeting of the Parties, this being one term of office. The members of the Bureau shall be eligible for re-election for one further consecutive term of office only. In electing the Bureau members, due account shall be taken of the need to ensure a balanced representation of the different geographical subregions of ECE.

5. The Bureau shall be chaired by the Chairperson of the Meeting of the Parties or, in his or her absence, by a Vice-Chairperson.

6. If a member of the Bureau resigns or is otherwise unable to complete the assigned term of office or to perform the functions of the office, a representative of the same Party or of the same non-governmental organizations shall be named by the Party or non-governmental organizations concerned to replace the said member for the remainder of that member's mandate.

Annex II

**COMPROMISE PROPOSAL OF THE CHAIRPERSON OF THE WORKING
GROUP ON THE OUTSTANDING ISSUES OF THE COMPLIANCE
MECHANISM, TAKING ACCOUNT OF CEP/WG.5/AC.1/2001/2, ANNEX II, AND
CEP/WG.5/AC.1/2001/6, ANNEX II**

**DRAFT DECISION I/... CONCERNING ARRANGEMENTS FOR REVIEW OF
COMPLIANCE**

The Meeting of the Parties,

Determined to promote and improve compliance with the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (“the Convention”) and recalling article 15 of the Convention,

Recognizing the necessity for rigorous reporting by Parties of their compliance with the Convention,

1. Establishes the Compliance Committee for the review of compliance by the Parties with their obligations under the Convention;
2. Decides that the structure and functions of the Compliance Committee and the procedures for review of compliance shall be those set out in the appendix to this decision;
3. Decides that this decision shall become effective on the thirtieth day following the date of its adoption.

Appendix

**STRUCTURE AND FUNCTIONS OF THE COMPLIANCE
COMMITTEE AND PROCEDURES FOR THE REVIEW OF COMPLIANCE**

Structure

1. (a) The Committee shall consist of eight members.
- (b) The members of the Committee shall serve in their personal capacity.
- (c) The Committee shall be composed of nationals of the Parties to the Convention who shall be persons of high moral character and recognized competence in the fields to which the Convention relates, including persons having legal experience.
- (d) The Committee may not include more than one national of the same State.
- (e) Committee members meeting the requirements of subparagraph (c) shall be nominated by Parties, Signatories, and non-governmental organizations falling within the scope of article 10, paragraph 5, of the Convention and promoting environmental protection, for election pursuant to subparagraph (g).
- (f) Committee members shall be elected on the basis of nominations in accordance with subparagraph (e). The Meeting of the Parties shall give due consideration to all nominations.
- (g) The Meeting of the Parties shall elect the members of the Committee by consensus or, failing consensus, by secret ballot.
- (h) In the election of the Committee, consideration should be given to the geographical distribution of membership and diversity of experience.
- (i) The Meeting of the Parties shall, as soon as practicable, elect four members to the Committee to serve until the end of the next ordinary meeting and four members to serve a full term of office. At each ordinary meeting thereafter, the Meeting of the Parties shall elect four members for a full term of office. Outgoing members may be re-elected once for a further full term of office, unless in a given case the Meeting of the Parties decides otherwise. A full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. The Committee shall elect its own Chairperson and Vice-Chairperson.
- (j) If a member of the Committee can no longer perform his or her duties as member of the Committee for any reason, the Bureau of the Meeting of the Parties shall appoint another member fulfilling the criteria in this paragraph to serve the remainder of the term, subject to the approval of the Committee.

(k) Every member serving on the Committee shall, before taking up his or her duties, make a solemn declaration in open Committee that he or she will perform his or her functions impartially and conscientiously.

Meetings

2. The Committee shall, unless it decides otherwise, meet at least once a year. The secretariat shall arrange for and service the meetings of the Committee.

Functions of the Committee

3. (a) The Committee shall:
- (i) Consider any submission, referral or communication made in accordance with paragraphs 4, 5 and 6 below;
 - (ii) Prepare, at the request of the Meeting of the Parties, a report on compliance with or implementation of the provisions in the Convention; and
 - (iii) Monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention;

and act pursuant to paragraphs 11 and 12.

(b) The Committee may examine compliance issues and make recommendations if and as appropriate.

Submission by Parties

4. (a) A submission may be brought before the Committee by one or more Parties that have reservations about another Party's compliance with its obligations under the Convention. Such a submission shall be addressed in writing to the secretariat and supported by corroborating information. The secretariat shall, within two weeks of receiving a submission, send a copy of it to the Party whose compliance is at issue. Any reply and supporting information shall be submitted to the secretariat and to the Parties involved within three months or such longer period as the circumstances of a particular case may require but in no case later than six months. The secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which shall consider the matter as soon as practicable.

(b) A submission may be brought before the Committee by a Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under the Convention. Such a submission shall be addressed in writing to the secretariat and explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. The secretariat shall transmit the submission to the Committee, which shall consider the matter as soon as practicable.

Referrals by the secretariat

5. Where the secretariat, in particular upon considering the reports submitted in accordance with the Convention's reporting requirements, becomes aware of possible non-compliance by a Party with its obligations under the Convention, it may request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within three months, or such longer period as the circumstances of the matter may require but in no case later than six months, the secretariat shall bring the matter to the attention of the Committee, which shall consider the matter as soon as practicable.

Communications from the public

6. (a) On the expiry of twelve months from either the date of adoption of this decision or from the date of the entry into force of the Convention with respect to a Party, whichever is the later, communications may be brought before the Committee by one or more members of the public concerning a Party's compliance with the Convention, unless that Party has notified in writing by the end of the applicable period to the Depositary that it is unable to accept, for a period of not more than four years, the consideration of such communications by the Committee. The Depositary shall without delay notify all Parties of any such notification received. During the four-year period mentioned above, the Party may revoke its notification thereby accepting that, from that date, communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Convention.

(b) The communications referred to in subparagraph (a), shall be addressed to the Committee through the secretariat in writing and may be in electronic form. The communications shall be supported by corroborating information.

(c) The Committee shall consider any such communication unless it determines that the communication is:

- (i) Anonymous;
- (ii) An abuse of the right to make such communications;
- (iii) Manifestly unreasonable;
- (iv) Incompatible with the provisions of this decision or with the Convention.

(d) The Committee should at all relevant stages take into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress.

(e) Subject to the provisions of subparagraph (c), the Committee shall as soon as possible bring any communications submitted to it under subparagraph (a) to the attention of the Party alleged to be in non-compliance.

(f) A Party shall, as soon as possible but not later than five months after any communication is brought to its attention by the Committee, submit to the Committee

written explanations or statements clarifying the matter and describing any response that it may have made.

(g) The Committee shall, as soon as practicable, further consider communications submitted to it pursuant to this paragraph and take into account all relevant written information made available to it, and may hold hearings.

Information gathering

7. To assist the performance of its functions, the Committee may:

- (a) Request further information on matters under its consideration;
- (b) Undertake, with the consent of any Party concerned, information gathering in the territory of that Party;
- (c) Consider any relevant information submitted to it; and
- (d) Seek the services of experts and advisers as appropriate.

Confidentiality

8. (a) Save as otherwise provided for in this paragraph, no information held by the Committee shall be kept confidential.

(b) The Committee and any person involved in its work shall ensure the confidentiality of any information that falls within the scope of the exceptions provided for in article 4, paragraphs 3 (c) and 4, of the Convention and that has been provided in confidence.

(c) The Committee and any person involved in its work shall ensure the confidentiality of information that has been provided to it in confidence by a Party when making a submission in respect of its own compliance in accordance with paragraph 4 (b) above.

(d) Information submitted to the Committee, including all information relating to the identity of the member of the public submitting the information, shall be kept confidential if submitted by a person who asks that it be kept confidential because of a concern that he or she may be penalized, persecuted or harassed.

(e) If necessary to ensure the confidentiality of information in any of the above cases, the Committee shall hold closed meetings.

(f) Committee reports shall not contain any information that the Committee must keep confidential under subparagraphs (b) to (d) above. Information that the Committee must keep confidential under subparagraph (d) shall not be made available to any Party. All other information that the Committee receives in confidence and that is related to any recommendations by the Committee to the Meeting of the Parties shall be

made available to any Party upon its request; that Party shall ensure the confidentiality of the information it has received in confidence.

Entitlement to participate

9. (a) A Party in respect of which a submission, referral or communication is made or which makes a submission, as well as the member of the public making a communication, shall be entitled to participate in the discussions of the Committee with respect to that submission, referral or communication.

(b) The Party and the member of the public shall not take part in the preparation and adoption of any findings, any measures or any recommendations of the Committee.

(c) The Committee shall send a copy of its draft findings, draft measures and any draft recommendations to the Parties concerned and the member of the public who submitted the communication if applicable, and shall take into account any comments made by them in the finalization of those findings, measures and recommendations.

Committee reports to the Meeting of the Parties

10. The Committee shall report on its activities at each ordinary meeting of the Parties and make such recommendations as it considers appropriate. Each report shall be finalized by the Committee not later than twelve weeks in advance of the meeting of the Parties at which it is to be considered. Every effort shall be made to adopt the report by consensus. Where this is not possible, the report shall reflect the views of all the Committee members. Committee reports shall be available to the public.

Consideration by the Compliance Committee

11. Pending consideration by the Meeting of the Parties, with a view to addressing compliance issues without delay, the Compliance Committee may:

(a) In consultation with the Party concerned, take the measures listed in paragraph 12 (a);

(b) Subject to agreement with the Party concerned, take the measures listed in paragraph 12 (b), (c) and (d).

Consideration by the Meeting of the Parties

12. The Meeting of the Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention. The Meeting of the Parties may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:

- (a) Provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention;
- (b) Make recommendations to the Party concerned;
- (c) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
- (d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
- (e) Issue declarations of non-compliance;
- (f) Issue cautions;
- (g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;
- (h) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

Relationship between settlement of disputes and the compliance procedure

13. The present compliance procedure shall be without prejudice to article 16 of the Convention on the settlement of disputes.

Enhancement of synergies

14. In order to enhance synergies between this compliance procedure and compliance procedures under other agreements, the Meeting of the Parties may request the Compliance Committee to communicate as appropriate with the relevant bodies of those agreements and report back to it, including with recommendations as appropriate. The Compliance Committee may also submit a report to the Meeting of the Parties on relevant developments between the sessions of the Meeting of the Parties.