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ECONOMIC COMMISSION FOR EUROPE

**Meeting of the Parties to the Convention
on Environmental Impact Assessment
in a Transboundary Context**

**Ad hoc Working Group on the Protocol
on Strategic Environmental Assessment**

REPORT OF THE SIXTH SESSION

1. The sixth session of the ad hoc Working Group on the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment (EIA) in a Transboundary Context took place in Ohrid (the former Yugoslav Republic of Macedonia) from 23 to 27 September 2002.
2. It was attended by the delegations of: Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Kazakhstan, Latvia, Lithuania, Netherlands, Norway, Poland, Republic of Moldova, Russian Federation, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, United Kingdom and Uzbekistan.
3. The meeting was attended by representatives of the Commission of the European Communities.
4. The following international and non-governmental organizations were also represented: ECOTERRA, European ECO Forum, International Association for Impact Assessment (IAIA), and Regional Environmental Center (REC).
5. The meeting was opened by Mr. Terje Lind, Chairman of the Working Group, and by Mrs. Menka Spirovska, who welcomed the participants on behalf of the Ministry of Environment of the former Yugoslav Republic of Macedonia. The Chairman informed the delegations that he intended, with the support of all participating countries, to finalize the negotiations of the protocol soon, so that delegations could prepare for its adoption and signing at the Kiev Ministerial Conference "Environment for Europe" (May 2003). The importance of finalizing the negotiations in time for Kiev was also reflected, as the Chairman pointed out, in the UNECE Ministerial Statement to the World Summit on Sustainable Development (ECE/AC.22/2001/2, para. 44).

I. ADOPTION OF THE AGENDA

6. The agenda was adopted on the understanding that item 2 on the consideration of the report of the fifth session would be dealt with after item 3.

II. PREPARATION OF A DRAFT PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA)

7. The Chairman introduced the proposal for a new structure of the protocol prepared by the Bureau. All delegations taking part in the discussions welcomed the proposal and thanked the Bureau for its preparation. The Working Group adopted the new structure with certain amendments and thanked Ms. V. Grigorova (Bulgaria), Mr. S. Ruchti (Switzerland) and Ms. A. Golding (United Kingdom) for preparing a new version of the protocol taking into account this new structure.

8. The delegation of the United Kingdom introduced the informal documents prepared by a small drafting group on the compliance issues and final clauses. The Meeting thanked the delegation of the United Kingdom and the small group for their work. The delegation of the Netherlands indicated that it would provide comments on these issues at a later stage.

9. Following a discussion on the final clauses and compliance, it was decided that:

(a) The protocol should be open to ECE member States, both Parties and non-Parties to the Convention, and to non-ECE members in accordance with the relevant provision of the EIA Convention;

(b) The institutional arrangements and structure of the protocol should be linked to those of the EIA Convention, so the Meeting of the Parties to the EIA Convention would also serve as the Meeting of the Parties to the SEA protocol. However, the first meeting of the Parties to the protocol would be held within one year after its entry into force;

(c) No new compliance system for the protocol should be developed. The Implementation Committee of the EIA Convention would deal with compliance issues under the protocol. The mandate of this Committee would consequently have to be expanded.

10. The Meeting decided to use as a basis for further discussion the text for the final clauses as included in annex I, taking into account the decisions taken at the present meeting.

11. The delegation of the United Kingdom introduced a proposal for the preamble prepared by the small drafting group. Delegations taking part in the discussion thanked the delegation of the United Kingdom and the small group for their work. The Meeting discussed the proposal and decided to use for further discussion the text as included in annex II below.

12. The Working Group established small drafting groups on the following issues :

(a) Article 8 on public participation, article 9 on consultation and article 10 on transboundary issues, led by the Commission of the European Communities;

(b) Article 4 on plans and programmes, led by Norway;

(c) Article 14 policies and legislation, led by Poland;

(d) Annexes, led by Sweden;

(e) Article 2 on definitions, led by Kazakhstan.

13. Based on the different proposals by the small drafting groups, the Working Group discussed the above-mentioned issues and decided to use for further discussion the texts included in annexes III, IV, V and VI below.

14. The delegation of the United Kingdom asked for procedural issues concerning the entry into force of the protocol to be considered at the next meeting and offered to provide a draft text on this subject.

III. CONSIDERATION OF THE REPORT OF THE FIFTH SESSION

15. The Working Group took note of the comments prepared by the Commission of the European Communities and the member States of the European Union and decided to include them in annex VII to the present report.

IV. CLOSING OF THE SIXTH SESSION

16. The Chairman thanked the delegations for a productive session and indicated that good progress had been made thanks to the constructive atmosphere and the willingness of all delegations to find compromises. He reminded the Working Group that the next session would be held in Geneva from 18 to 22 November 2002.

Annex I

Article 15

MEETING OF THE PARTIES

1. Other than the first meeting, meetings of the Parties to the Convention shall serve as meetings of the Parties to this Protocol. The first meeting of the Parties to this Protocol shall be convened not later than one year after the date of the entry into force of this Protocol.
2. Parties to the Convention which are not Parties to this Protocol may participate as observers in the proceedings of any session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol. When the Meeting of the Parties to the Convention serves as the Meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by the Parties to this Protocol.
3. When the Meeting of the Parties to the Convention serves as the Meeting of the Parties to this Protocol, any member of the Bureau of the Meeting of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol shall be replaced by an other member to be elected by and from amongst the Parties to this Protocol.
4. The Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and, for this purpose, shall:
 - (a) Review policies for and methodological approaches to strategic environmental assessment with a view to further improving the procedures provided for under this Protocol;
 - (b) Exchange information regarding experience gained in strategic environmental assessment and in the implementation of this Protocol;
 - (c) Seek, where appropriate, the services and cooperation of competent bodies having expertise pertinent to the achievement of the purposes of this Protocol;
 - (d) Establish such subsidiary bodies as it considers necessary for the implementation of this Protocol;
 - (e) Where necessary, consider and adopt proposals for amendments to this Protocol;
 - (f) Consider and undertake any additional action, including action to be carried out jointly under this Protocol and the Convention, that may be required for the achievement of the purposes of this Protocol.
5. The rules of procedure of the Meeting of the Parties [and the financial procedures applied under the Convention] shall be applied mutatis mutandis under this Protocol, except as may otherwise be decided by consensus by the Meeting of the Parties serving as the Meeting of the Parties to this Protocol.

Article 16

RIGHT TO VOTE

1. Except as provided for in paragraph 2 below, each Party to this Protocol shall have one vote.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 17

SECRETARIAT

The secretariat established by article 13 of the Convention shall serve as the secretariat of this Protocol and article 13, paragraphs (a) to (c), of the Convention on the functions of the secretariat shall apply mutatis mutandis to this Protocol.

Article 18

ANNEXES

The annexes to this Protocol shall constitute an integral part thereof.

Article 19

AMENDMENTS TO THE PROTOCOL

1. Any Party may propose amendments to this Protocol.
2. The procedure for adopting amendments to the Convention laid down in paragraphs 2 to 5 of article 14 of the Convention shall apply mutatis mutandis to amendments proposed to this Protocol.

Article 20

SETTLEMENT OF DISPUTES

The provisions of article 15 of the Convention on the settlement of disputes shall apply mutatis mutandis to this Protocol.

Article 21

SIGNATURE

This Protocol shall be open for signature at Kiev (Ukraine) from to....., and thereafter at United Nations Headquarters in New York until, by States members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe pursuant to paragraphs 8 and 11 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence over matters governed by this Protocol, including the competence to enter into treaties in respect of these matters.

Article 22

DEPOSITARY

The Secretary-General of the United Nations shall act as the Depositary of this Protocol.

Article 23

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Protocol shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations.
2. This Protocol shall be open for accession as from by the States and regional economic integration organizations referred to in [article 21].
3. Any other State, not referred to in paragraph 2 above, that is a Member of the United Nations may accede to the Protocol upon approval by the Meeting of the Parties to the Protocol.
4. Any organization referred to in [article 21] which becomes a Party to this Protocol without any of its member States being a Party shall be bound by all the obligations under this Protocol. If one or more of such an organization's member States is a Party to this Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under this Protocol concurrently.
5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in [article 21] shall declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary of any relevant modification to the extent of their competence.

Article 24

ENTRY INTO FORCE

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.
2. For the purposes of paragraph 1 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of such an organization.
3. For each State or organization referred to in [article 21] which ratifies, accepts or approves this Protocol or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Protocol shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

Article 25

WITHDRAWAL

At any time after four years from the date on which this Protocol has come into force with respect to a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary. Any such withdrawal shall not affect the application of articles [..] to [..] of this Protocol with respect to a[n] [strategic] environmental assessment under this Protocol which has already been started, or the application of Article [...] of this Protocol with respect to a request which has already been made, before such withdrawal takes effect.

Article 26

AUTHENTIC TEXTS

The original of this Protocol, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Kiev (Ukraine), thisday of (May, two thousand and three).

Annex II

REVISED DRAFT PREAMBLE

The Parties to this Protocol,

Recognizing the importance of integrating environmental, including health, considerations into the preparation and adoption of plans, programmes, policies and legislation,

Committing themselves to promoting sustainable development and therefore basing themselves on the conclusions of the United Nations Conference on Environment and Development in Rio de Janeiro in 1992, in particular principles 4 and 10 of the Rio Declaration on Environment and Development, Brazil, and Agenda 21, as well as the outcome of the third Ministerial Conference on Environment and Health (London 1999) and [reference to specific provision in the Plan of Implementation of the World Summit on Sustainable Development, Johannesburg 2002],

Bearing in mind the Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo, Finland, on 25 February 1991, and decision II/9 of its Parties at Sofia on 26 and 27 February 2001, in which it was decided to prepare a legally binding protocol on strategic environmental assessment,

Recognizing that environmental assessment should form an integral part of the preparation and adoption of plans, programmes, policies and legislation and that the wider application of the principles of the environmental impact assessment to plans, programmes, policies and legislation will further strengthen the systematic analysis of their significant environmental effects,

Acknowledging the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998, and taking note of the relevant provision in the Lucca Declaration, adopted at the first meeting of its Parties,

Conscious, therefore, of the importance of providing for public participation in the process of [strategic] environmental assessment,

Acknowledging the benefits to the health and well-being of present and future generations that will follow if the need to protect and improve people's health is taken into account as an integral part of [strategic] environmental assessment,

Mindful of the need and importance of enhancing international cooperation in assessing the transboundary implications of proposed decisions affecting the environment,

Have agreed as follows :

Annex III

Article 4

FIELD OF APPLICATION CONCERNING PLANS AND PROGRAMMES

1. Each Party shall ensure that a[n] [strategic] environmental assessment is carried out for plans and programmes referred to in paragraphs 2, 3 and 4 which are likely to have significant environmental, including health, effects.
2. A[n] [strategic] environmental assessment shall be carried out for plans and programmes which are prepared for agriculture, forestry, fisheries, energy, industry including mineral industry, transport, regional development, waste management, water management, telecommunications, tourism, [nature conservation,] [military training grounds,] town and country planning or land use, and which set the framework for future development consent for projects listed in annex [x] [extended Espoo list *similar to annexes I and II of EIA Directive 97/11/EC (without thresholds)*].
3. For plans and programmes not covered by paragraph 2 and which set the framework for future development consent of any projects, a[n] [strategic] environmental assessment has to be carried out where a Party so determines according to the results of the screening under Article 5.
4. For plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 a[n] [strategic] environmental assessment has to be carried out only where a Party so determines according to the results of the screening under article 5.
5. The following plans and programmes are not subject to this Protocol:
 - (a) Plans and programmes whose sole purpose is to serve national defence or civil emergencies;
 - (b) Financial or budget plans and programmes.

Annex IV

Article 8

PUBLIC PARTICIPATION

1. Each Party shall ensure early, timely and effective public participation, when all options are open, in strategic environmental assessment for plans and programmes.
2. Each Party, using electronic media or other appropriate means, shall ensure the timely public availability of the draft plan or programme and the environmental report.
3. Each Party shall ensure that the public concerned, including relevant non-governmental organizations, is identified for the purposes of paragraphs 1 and 4.
4. Each Party shall ensure that the public referred to in paragraph 3 has the opportunity to express its opinion on the draft plan or programme and the environmental report within reasonable time frames.
5. Each Party shall ensure that the detailed arrangements for informing the public and consulting the public concerned are determined and made publicly available. For this purpose, each Party shall take into account to the extent appropriate the elements listed in annex [II a].

*

* *

In the consolidated version of the draft protocol (MP.EIA/AC.1/2003/3), insert into article 5 paragraph 2:

2. To the extent appropriate each Party shall endeavour to provide opportunities for the participation of the public concerned in the screening of plans and programmes under this article.

Insert into article 6 paragraph 3:

3. To the extent appropriate each Party shall endeavour to provide opportunities for the participation of the public concerned in the scoping of the environmental report under this article.

[3. Each Party shall also ensure that the public concerned is able to provide comments on the scope before any decision is made. The decision on the scope shall reflect how these comments have been taken into account.]

Annex V

Article 9

CONSULTATION WITH ENVIRONMENTAL AND HEALTH AUTHORITIES

1. Each Party shall designate the authorities to be consulted which, by reason of their specific environmental or health responsibilities, are likely to be concerned by the environmental, including health, effects of the implementation of the plan or programme.
2. The draft plan or programme and the environmental report shall be made available to the authorities referred to in paragraph 1.
3. Each Party shall ensure that the authorities referred to in paragraph 1 are given, in an early, timely and effective manner, the opportunity to express their opinion on the draft plan or programme and the environmental report.
4. Each Party shall determine the detailed arrangements for informing and consulting the environmental and health authorities referred to in paragraph 1.

Article 10

TRANSBOUNDARY CONSULTATIONS

1. Where a Party of origin considers that the implementation of a plan or programme is likely to have significant transboundary environmental, including health, effects or where a Party likely to be significantly affected so requests, the Party of origin shall as early as possible and no later than when informing its own public [completing its own public participation procedure] on the environmental report and before the adoption of the plan or programme notify the affected Party.
2. This notification shall contain, inter alia:
 - (a) The draft plan or programme and the environmental report including information on its possible transboundary environmental, including health, effects; and
 - (b) Information regarding the decision-making procedure, including an indication of the time schedule for the transmission of comments.
3. The affected Party shall indicate to the Party of origin whether it wishes to enter into consultations before the adoption of the plan or programme and, if it so indicates, the Parties concerned shall enter into consultations concerning the likely transboundary environmental, including health, effects of implementing the plan or programme and the measures envisaged to prevent, reduce or mitigate adverse effects.
4. Where such consultations take place, the Parties concerned shall agree on detailed arrangements to ensure that the public concerned and the authorities referred to in article 9 paragraph 1 in the affected Party are informed and given an opportunity to forward their opinion on the draft plan or programme and the environmental report within reasonable time frames.

Annex VI

Article 14

POLICIES AND LEGISLATION

[1. Each Party shall ensure that environmental, including health, concerns are considered and integrated to the extent appropriate, in preparing any of its proposed policies and legislation that are likely to have significant effects on the environment, including health.

2. In applying paragraph 1, each Party shall consider the appropriate elements of this Protocol.

3. Each Party shall determine the practical arrangements for the application of paragraphs 1 and 2.

4. Each Party shall report to the Meeting of the Parties to this Protocol on its application of this article.

[5. Each Party may decide not to apply the provisions of this article. Such a Party shall, upon ratification of this Protocol, inform the other Parties about this decision.]

ALTERNATIVE TEXT

[1. To the extent appropriate, the Parties shall endeavour to apply the principles of this Protocol (or alternatively a reference to relevant articles) to policies and legislation which are likely to have significant effects on the environment.

2. Each Party may decide not to apply the provisions of this article. Such a Party shall, upon ratification of this Protocol, inform the other Parties about this decision.]

Annex VII

**COMMENTS FROM THE COMMISSION OF THE EUROPEAN COMMUNITIES
AND THE MEMBER STATES OF THE EUROPEAN UNION
ON THE REPORT OF THE FIFTH SESSION (MP.EIA/AC.1/2002/5)**

Specific remarks:

- paragraph 3: delete "representatives of the Commission of the European Communities attended the meeting" and insert "The Commission of the European Community was represented" either into paragraph 2 or make a separate paragraph for this entry between paragraph 2 and paragraph 3.
- paragraph 9: Delete the second sentence.
- Annex I:
 - heading: delete 'by the Working Group'.
 - '(f) the need for mitigation measures': please clarify where this element comes from; it was not included in the version distributed to delegations in Oslo.

General remarks on paragraphs 11 to 13. Paragraphs 11, 12 and 13 are difficult to follow because they list various decisions taken in relation to articles 4, 10 and 13 which appear contradictory to each other to a certain extent. No overall concise conclusion in relation to these three articles can be drawn. The reports need to be clear on the final outcome of the discussion. It cannot be recalled that it was agreed to insert also the proposal from Kazakhstan (annex V to the report) into the updated version of the protocol since it was not discussed.

- Paragraph 11:
 - First sentence, replace 'joint proposal by the European Commission and Norway' by 'proposal from a small informal drafting group'.
 - Add at the beginning of the second sentence: "The Working Group agreed on a new version of article 10 and"
- Paragraph 12 (fifth line): replace the reference to article 13 'paragraphs 1, 3 and, possibly, 5' with 'paragraphs 1, 2 and, possibly, 5'.
- Paragraph 15: first sentence add: ".....considered and agreed to some but not all of the proposals for references to health which were made by the drafting group on health as included in annex I to the report of its fourth session".
- Paragraph 18: insert the correct version of the statement that was made by the Commission of the European Communities, which reads as follows: " On behalf of the European Commission and several of the Member States of the European Community, an appeal was made for a more proactive approach of the secretariat in the fulfilment of its role." (The European Commission also encouraged the Chairman to be firm on the delegations as well as on the secretariat.
- Annex IV:
 - Paragraph 6: reinsert the text as distributed to delegations in Oslo; the addition of [timely] to be put within square brackets. Due to the rewording the link between the "detailed arrangements for informing and consulting" and "the authorities referred to in paragraph 5" is lost.

General remarks:

Although the updated SEA protocol text (MP.EIA/AC.1/2002/8 of 18 July 2002) is not subject to the comments to be sent until 2 September 2002, it is noted that the presentation of the text although being an official UNECE document is no clear basis for future work because it lacks internal consistency in the use of language and terminology.

It is regrettable that, instead of improvement in relation to aligning and simplifying the provisions on public participation, the situation became worse than it was before the Oslo meeting, especially when one looks into the updated version of the protocol text where now even more provisions on public participation can be found.

Annex VIII

**PROPOSAL BY THE INTERNATIONAL ASSOCIATION FOR IMPACT ASSESSMENT
(IAIA)**

Article 8 : Public participation

Proposed new paragraph 6 :

6. Parties shall ensure that the preparation of the environmental report includes proper consultations with the public, in order to obtain the information, related to the environment, which the public can provide.