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ECONOMIC COMMISSION FOR EUROPE

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

**Working Group on Environmental Impact Assessment
(Ninth meeting, Geneva, 3–6 April 2006)**

**REPORT OF THE EIGHTH MEETING
OF THE IMPLEMENTATION COMMITTEE**

1. The eighth meeting of the Implementation Committee took place in Geneva on 14 and 15 November 2005.
2. Representatives from the following Parties, members of the Committee, attended the meeting: Armenia (Ms. Margarita Korkhmazyan), Croatia (Mr. Nenad Mikulic), Finland (Ms. Seija Rantakallio), Germany (Mr. Matthias Sauer), Kyrgyzstan (Ms. Gulfiya Shabaeva), Poland (Mr. Jerzy Jendroska), Slovakia (Mr. Tomáš Cernohous) and The Former Yugoslav Republic of Macedonia (Ms. Menka Spirovska). Mr. Jendroska was able to participate only on the second day.
3. Ms. Rantakallio, Chairperson, opened the meeting. She noted that Poland had reported difficulties sending its representative, Mr. Jendroska, because of a lack of funds. The Committee agreed to send a letter to the focal point for Poland expressing its concern. The secretariat of the Espoo and Aarhus Conventions had been able, on an exceptional basis, to arrange funding for Mr. Jendroska's participation in part of the meeting. The Committee also agreed that the Chair should report this issue to the Working Group on Environmental Impact Assessment (EIA).
4. The Committee adopted its agenda as prepared by the secretariat.

I. REVIEW OF THE COMPLIANCE REPORTING SYSTEM

A. Compliance reporting system

5. The Chair reported on her presentation to the eighth meeting of the Working Group on EIA and on the process by which the draft questionnaire on the implementation of the Convention had been finalized.

6. The secretariat reported that the revised questionnaire had been sent to the Parties and non-Parties in October 2005, as requested. The Committee agreed that the secretariat should send a letter to each State, drawing attention to the questionnaire. The letter should be addressed to the organization of the focal point, with a copy sent directly to the focal point.

7. It was agreed that Mr. Cernohous, Mr. Mikulic and Ms. Spirovska would distribute a draft table of contents for the document that would summarize the completed questionnaires by e-mail to the Committee by 15 December 2005. The other members would then provide comments by 9 January 2006. A revised draft would be distributed by 23 January 2006.

B. General compliance issues

8. The Committee discussed general compliance issues reported in the previous review of implementation. The Chair noted the need to identify both compliance issues and possible remedies. The Committee discussed parts of the review on the basis of reports by Committee members. The Committee asked the secretariat to circulate a table into which the members would insert information on general compliance issues. Each entry in the table should be accompanied by a paragraph describing the general compliance issue and by a recommended remedy. The paragraphs will be included in the Committee's report to the Meeting of the Parties.

9. Ms. Shabaeva reported on the part of the review addressing the preparation of the EIA documentation. Her analysis had been based on, and had confirmed, the summary of general compliance issues provided by the secretariat. The main compliance problems she identified were:

(a) the time required for a response from the affected Party to a notification; and

(b) the adequacy of the content of the EIA documentation in terms of whether the information met the needs of the affected Party and whether it was in line with the Convention.

10. Ms. Shabaeva suggested that these problems might lead to delays for the Party of origin and the project proponent, as well as limiting public information in the affected Party. She suggested that Parties might need guidance on how to overcome the problems.

11. Mr. Cernohous reported on the part of the review addressing the transfer and distribution of the EIA documentation. He noted that many of the Parties that had completed the questionnaire had not responded to many of the questions in this part, or had responded only by indicating that they had no experience of applying the Convention. Nonetheless, he identified timing and organizational problems with the transfer and distribution of the EIA documentation. He highlighted difficulties with Article 4, paragraph 2, of the Convention. The secretariat noted that difficulties with this provision had also been identified in the guidance on public participation (decision III/8). The Committee agreed that this provision needed to be addressed in bilateral and multilateral agreements, and that interpretative guidance might be required.

12. The Committee decided that general compliance issues as well as possible remedies should be reported to the Working Group on EIA. The Working Group might then decide on action to be taken through the next meeting of the Parties. The Committee decided that Mr. Cernohous, Mr. Jendroska, Ms. Korkhmazyan, Mr. Mikulic and Ms. Shabaeva should provide this information by 9 January 2006 on the parts of the review assigned to them. The Committee decided to discuss at its next meeting general compliance issues relating to notification, public participation and consultation. It will discuss issues relating to the final decision and research at its tenth meeting.

C. Specific compliance issues

13. In the context of specific compliance issues identified in the previous review of implementation, the Committee discussed its discretionary function of “Committee Initiative”, defined in paragraph 6 of its structure and functions (decision III/2). This function is also related to decision III/2, paragraph 7, where the Committee was requested to consider developing criteria for dealing with information other than submissions from Parties. The Committee considered and identified a number of possible sources of information by which the Committee might become aware of possible non-compliance by a Party, the review of implementation being one of them. It also considered and identified a number of possible criteria for starting a Committee Initiative, including (a) that there was the basis for a profound suspicion of non-compliance, (b) that the issue was related to an activity in Appendix I to the Convention likely to have a significant adverse transboundary impact and (c) that Committee time and resources were available.

14. The Committee agreed to finalize the list of sources and criteria at its next meeting and to report them to the Working Group meeting in April 2006. The Committee considered that these sources of information and criteria might be incorporated into the Committee’s operating rules (see para. 26-28).

15. On the basis of the previous review of implementation, the secretariat had identified three specific compliance issues regarding which the Committee had decided to write to the Parties concerned requesting clarification. The Committee considered these issues to be pilot cases, with all three Parties concerned (Armenia, Finland and Kyrgyzstan) being members of the Committee. The Committee decided that a member whose country’s compliance was being discussed should be allowed to participate in the discussion, though it might choose not to do so. Should recommendations be drawn up, paragraphs 9 and 10 of the structure and functions should be applied, *mutatis mutandis*, to avoid a conflict of interest.

16. The Committee welcomed Armenia’s constructive response to its first letter and decided that the Chair would write again to the country’s focal point, requesting further information and offering different means by which the Committee might provide any required assistance with compliance.

17. To avoid any conflict of interest, the Chair (from Finland) asked Ms. Spirovska (Vice-Chair) to act as Chair during the discussion of the response received from Finland. The Chair was not present during the discussion or the decision-making. The remaining members considered Finland’s response to be sufficient and asked the secretariat to draft a letter, to be signed by Ms. Spirovska, thanking Finland for its response, informing it of the Committee’s discussion and asking to be informed of progress with planned measures to strengthen compliance. On the Chair’s return, the entire Committee agreed that the relevant correspondence should be placed on the Convention’s website as an illustration of the Committee’s approach and of a proper and sufficient response from a Party to addressing the issue.

18. Ms. Shabaeva provided an oral response to the letter from the Committee to Kyrgyzstan. The Committee agreed that a reminder be sent to Kyrgyzstan, and Ms. Shabaeva assured the Committee that the country would rapidly provide a written response. The Committee agreed that Armenia and Kyrgyzstan should be identified in this report of the meeting, even though discussions were ongoing. It agreed to discuss any responses from Armenia and Kyrgyzstan at its next meeting.

19. The Committee also agreed that the examination of the different parts of the review of implementation, being undertaken by the members to identify general compliance issues, should be extended to specific compliance matters. To avoid any conflict of interest, a second member was identified for each part of the review to examine only compliance with provisions in that part by the country of the first member.

20. The Committee agreed on a set of principles to be borne in mind when considering specific compliance issues arising from the review of implementation: issues should be within the Committee's mandate, and their consideration should promote credibility, predictability, transparency and consistency and be unbiased and fair to all.

21. The Committee asked the secretariat to circulate two tables into which the members would insert the information on specific compliance issues by 9 January 2006. One table will provide an overview of responses to the questionnaire by each Party (table rows) for key provisions (table columns). In each cell, the reviewer will mark one of the following: no response; too general a response; response suggests compliance; or response suggests possible (partial) non-compliance.

22. Further information on each indication of possible (partial) non-compliance in the first table will be provided in the second table. The Chair volunteered to identify those Parties that had indicated a lack of experience in applying the Convention so that the Committee might discuss why this might be the case.

II. STRUCTURE AND FUNCTIONS OF THE IMPLEMENTATION COMMITTEE

23. The Committee considered a discussion note on institutional and procedural issues related to the Protocol on Strategic Environmental Assessment. The note had been prepared for the second meeting of the Signatories (25–27 April 2005) by the delegations of Germany, the Netherlands and the United Kingdom. The Committee recalled that it had been requested by the Meeting of the Parties to consider developing a proposal on membership of the Committee when considering matters under the Protocol, one of the issues addressed by the note.

24. Though the Committee did not conclude its discussion of this issue, it did observe that four of its members were to be replaced at the next meeting of the Parties and that this might provide an opportunity to nominate new members being Parties to both the Convention and the Protocol. It also concluded that the Chair should be from a Party to the Convention and to the Protocol. Other aspects discussed included:

(a) whether the Committee would continue to comprise eight members or it might be larger when considering matters under both instruments. One alternative could be to limit the size to a maximum of 12 members, where the Committee would comprise eight members representing Parties to the Convention and eight members representing Parties to the Protocol. Four or more of these members could then deal with issues from both the Convention and the Protocol;

(b) whether the Meeting of the Parties to the Convention, and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol, might jointly nominate certain members;

(c) how Vice-Chairs might be nominated. The Committee might choose two Vice-Chairs, one representing a Party to the Convention, the other representing a Party to the Protocol; and

(d) what would happen if a member nominated when Party to only one of the instruments later became a Party to the other. One alternative could be that such a member might continue to be excluded from the Committee when the latter was considering matters under the other instrument.

25. The Committee agreed that the Chair and Mr. Sauer would elaborate a proposal on the basis of these aspects and that would circulate the elaborated proposal to the Committee by 30 January 2006. The elaborated proposal, including an amendment to decision III/2, should be discussed with the Bureau and later considered by the Committee at its next meeting.

III. WORK PLAN

A. Operating rules

26. Marianna Bolshakova of the Aarhus Convention's secretariat presented the modus operandi of the Aarhus Convention's Compliance Committee. The modus operandi document had been developed to assure transparency and predictability and to provide information to the public. As the Aarhus Compliance Committee comprises independent experts, the modus operandi also provides transparency to the Parties. This document is based on the Aarhus Convention's rules of procedure and the decision of the Parties establishing the compliance review mechanism. In the first two years of its work, the Compliance Committee had further elaborated procedures on, among other matters, how the public might prepare communications, how to deal with submissions and communications, the use of e-mail for certain decisions and the frequency of Committee meetings. The modus operandi is considered a living document and the Compliance Committee adjusts some rules on the basis of its experience. Any adjustments or additions are described in the reports of the Compliance Committee's meetings and included in an online manual.

27. Ms. Bolshakova said the Compliance Committee was meeting four times a year, each time for two or three days. Approximately two thirds of the Compliance Committee's time was spent considering communications and submissions. It had received one submission from a Party regarding another Party and 15 communications from the public. The Meeting of the Parties to the Aarhus Convention was the body making final decisions with regard to compliance by individual Parties and taking appropriate measures. However, the Compliance Committee's mandate (ECE/MP.PP/2/Add.8) provided for it to undertake certain measures in consultation with, or with the agreement of, the concerned Party with a view to addressing compliance issues without delay in the intersessional period. The Committee thanked Ms. Bolshakova for her presentation.

28. The Committee asked Mr. Sauer and Mr. Jendroska to develop further the draft operating rules, based on a text prepared by the secretariat. The Committee agreed with the proposal by the two members that they focus on a few key elements (as identified at the Committee's sixth meeting, MP.EIA/WG.1/2005/3, para. 6) in the draft document, together with a number of other issues identified by Mr. Jendroska. The next draft will be distributed to the members of the Committee by 30 January 2006.

B. Encouraging self-referral

29. The Chair presented some ideas developed by Ms. Spirovska and herself on how to encourage self-referral by Parties. She suggested that Parties might prefer self-referral to being the subject of a submission by another Party or of a Committee Initiative. In addition, self-referral might be a channel for receiving expert help. The Committee also discussed whether self-referral might attract funding, particularly from the European Commission. The Chair suggested means by which self-referral might be facilitated, including a simple self-referral format and the identification of remedial measures that might be offered. The Committee decided to return to this issue at its future meetings.

C. Report to the Meeting of the Parties on the Committee's activities

30. The Committee discussed the likely contents for the Committee's report to the fourth meeting of the Parties on the basis of an outline prepared by the secretariat and the Chair. The Committee agreed that the outline would form an adequate basis for the report but that it might be adapted during subsequent Committee meetings.

IV. OTHER BUSINESS

31. The secretariat had received no submissions by Parties.

32. The Committee discussed transboundary EIA provisions in other multilateral environmental agreements. The Committee considered it useful to identify any potential conflicts between provisions in other multilateral environmental agreements and provisions in the Convention which might impede Parties' compliance with the Convention. The Committee requested the secretariat to inform it of any such potential compliance issues of which it became aware.

33. The secretariat provided an update on the ongoing procedure of the Inquiry Commission established at the request of Romania. This commission had held preliminary meetings early in 2005 but had then encountered budgetary difficulties, which were solved by September 2005. The commission had met again on 28 October 2005 for an update on the situation, including difficulties with travelling to the region. The commission had established a new timetable for its work, including for examination of key issues by its experts. A site visit is foreseen for April 2006, with the commission aiming to finalize its work early in May 2006. The secretariat informed the Committee that it planned to present an analysis of the inquiry procedure, once completed, and how it might be improved. The Committee requested the secretariat to provide an update on this at its next meeting.

34. The Committee decided to discuss at its next meeting a paper, prepared by the United Kingdom for the Working Group on EIA, regarding the frequency of future meetings of the Parties and the impacts this might have on the work of the Implementation Committee.

35. The Committee decided to meet again in Geneva on 6–8 February 2006.

36. The meeting was closed on Tuesday, 15 November 2005.