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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

Tenth meeting  
Geneva, 23–25 May 2007

**REPORT OF THE NINTH MEETING  
OF THE IMPLEMENTATION COMMITTEE**

1. The Implementation Committee held its ninth meeting in Geneva on 6–8 February 2006.
2. Representatives from the following Parties members of the Committee attended the meeting: Armenia (Ms. Margarita Korkhmazyan), Croatia (Mr. Lovel Petrovic, replacing Mr. Nenad Mikulic), Finland (Ms. Seija Rantakallio), Germany (Mr. Matthias Sauer), Kyrgyzstan (Ms. Gulfiya Shabaeva), Poland (Ms. Krystyna Skarbek, replacing Mr. Jerzy Jendroska), Slovakia (Mr. Tomáš Černoš) and The former Yugoslav Republic of Macedonia (Ms. Menka Spirovska).
3. Ms. Rantakallio, Chair, opened the meeting.
4. The Committee adopted its agenda as prepared by the secretariat.

## **I. Criteria for dealing with information other than submissions from Parties**

5. The Committee discussed the issue of developing criteria for dealing with information other than submissions from Parties, on the basis of an introduction by the Chair. The Committee took into consideration paragraphs 5 and 7 of decision III/2 and the reports of its previous meetings (in particular MP.EIA/WG.1/2003/8 and para. 7 of MP.EIA/WG.1/2004/4). In its consideration of paragraphs 4, 6 and 7 of the description of its structure and functions (decision III/2, appendix), the Committee distinguished sources of information by which the Committee might become aware of a possible case of non-compliance (under para. 6 of the appendix) from the sources identified for information gathering (para. 7 of the same).

6. The Committee agreed to propose to the Working Group on Environmental Impact Assessment (EIA) that the next meeting of the Parties adopt a decision on the review of compliance, including a revised description of the Committee's structure and functions, that would make possible the following with respect to the Committee initiative (decision III/2, appendix, para. 6):

The sources of information by which the Committee might become aware of a possible case of non-compliance shall be:

- a) The reviews of implementation, including Parties' responses to questionnaires regarding their implementation of the Convention;
- b) The reports of the meetings of the Parties, including their annexes;
- c) [Information from the secretariat;]
- d) Bilateral and multilateral agreements and national legislation implementing the Convention;
- e) The results of activities within the current workplan of the Convention, including case studies;
- f) Information from intergovernmental organizations;
- g) [Information from the public, including non-governmental organizations;]
- h) [Any other public sources, including the media].

In determining whether to begin a Committee initiative, the Committee shall take into account, *inter alia*, the following:

- a) [The source of the information is known and not anonymous;]
- b) The information relates to an activity in Appendix I to the Convention likely to have a significant adverse transboundary impact;
- c) The information is the basis for a profound suspicion of non-compliance;
- d) The information relates to the implementation of Convention provisions;
- e) [The source of the information is reliable and does not require further verification;]  
and
- f) Committee time and resources are available.

The Committee shall consider the information on a non-discriminatory, non-arbitrary and unbiased basis.

7. The Committee requested the advice of the Working Group on EIA on the above, in particular on the inclusion of the text in square brackets, and how to proceed.

## **II. Review of the compliance reporting system**

### **A. Compliance reporting system**

8. The secretariat reported that it had received one completed revised questionnaire, from Austria, which had been placed on the Convention's website at [www.unece.org/env/eia/review2006.htm](http://www.unece.org/env/eia/review2006.htm).

9. The Committee discussed a draft table of contents, prepared by Mr. Cernohous, Mr. Mikulic and Ms. Spirovska, for the document that would summarize the completed questionnaires. At the Chair's suggestion, the secretariat prepared a further revised draft table of contents, which the Committee decided could be used as a basis for drafting the review of implementation.

### **B. General compliance issues**

10. The Committee discussed general compliance issues reported in the previous review of implementation on the basis of reports by Committee members.

11. Mr. Petrovic introduced a paper on compliance issues related to the implementation of the Convention's notification requirements, focusing on the stage of the national EIA procedure at which notification occurs (Art. 3.1 of the Convention), whether supplementary information is included (Art. 3.5), the time allowed for a response (Art. 3.2 and 3.3), how to deal with a lack of response from the affected Party (Art. 3.4) and the responsibility for notifying the public in the affected Party (Art. 3.8).

12. The Committee noted that Parties send the notification at different stages in their EIA procedure, recalled Art. 3.1 ("as early as possible and no later than when informing its own public about the proposed activity"), and recommended that Parties clarify the timing of notification in bilateral and multilateral agreements.

13. The Committee recommended that each Party

- a) inform the secretariat of any necessary changes to the information on the points of contact presented on the Convention's website (further to decision I/3);
- b) as a Party of origin, specify a reasonable time frame for a response to a notification (Art. 3.2(c)) and, as a matter of good practice, request an acknowledgement of the notification;
- c) as an affected Party, always respond within the deadline specified in a notification (Art. 3.3); and
- d) as a Party of origin, and as a matter of good practice, take action to confirm that the notification has been received before assuming that the lack of a response indicates that an affected Party does not wish to participate.

14. The Committee agreed to discuss at its next meeting further compliance issues related to notification, taking into account the secretariat's summary and on the basis of information to be provided by Mr. Mikulic.

15. The Committee then examined general compliance issues related to public participation, on the basis of a paper, prepared by Mr. Jendroska and introduced by Ms. Skarbek, which focused on the nature of the legal obligation for public participation (Art. 2.6), the procedure for public participation (Art. 3.8) and responsibility for organizing public participation in the affected Party (Art. 4.2).

16. The Committee recognized that Parties had experienced difficulties regarding joint responsibility for organizing public participation ("the concerned Parties" in Art. 3.8 and 4.2), and it noted that public participation is an integral part of transboundary EIA. The Committee therefore urged Parties to clarify responsibilities regarding public participation case by case and in bilateral and multilateral agreements, taking into account the guidance on public participation in transboundary EIA (in decision III/8, particularly section 2.5). The Committee agreed to give particular attention to public participation when it examines the next review of implementation.

17. Ms. Korkhmazyan described possible non-compliance issues related to consultation (Art. 5), with the Committee again emphasizing the need to clarify practical arrangements case by case and in bilateral and multilateral agreements. The Committee agreed to also give particular attention to consultation when it examines the next review of implementation.

18. The Committee continued its discussion from its previous meeting on the preparation of EIA documentation and, in particular, problems related to the time required for a response from affected Parties to EIA documentation and the adequacy of the content of the documentation (as mentioned in para. 9 and 10 of ECE/MP.EIA/WG.1/2006/3). Ms. Shabaeva suggested that direct contact between the concerned Parties is key to resolving timing problems, for example, by verifying that the documentation had been received. She also suggested that early contact with the affected Party regarding the content of the documentation might help avoid serious difficulties later in the transboundary EIA procedure, including the provision of effective public participation and reasonable time frames. Consultation might also be used to resolve perceived problems with the EIA documentation. The Committee agreed with these recommendations and encouraged Parties to ensure that the EIA documentation met the requirements of Appendix II to the Convention and, as a matter of good practice, was of sufficient quality.

19. The Committee decided to discuss issues relating to the final decision and to research at its next meeting. The Committee also agreed that recommendations relating to general compliance issues should be addressed in its report to the fourth meeting of the Parties.

### C. Specific compliance issues

20. The Committee continued its consideration of the pilot case concerning Kyrgyzstan. The Committee reviewed the written response provided by Kyrgyzstan, dated 23 November 2005, pre-empting a reminder from the Committee. The Committee took note of the fact that the Convention had not yet been in force in Kyrgyzstan at the time of the case for which a

transboundary EIA procedure was described in the questionnaire, and that Kyrgyzstan had since developed its EIA regulations to ensure full implementation of the Convention. The Committee agreed that the Chair write to Kyrgyzstan stating that the Committee was satisfied with the information provided and would not consider the matter further. Ms. Shabaeva did not take part in this decision. She agreed with the Committee's request that the related correspondence be placed on the Convention's website.

21. The Committee reviewed the specific compliance issues identified by members and noted that it was not always clear whether the information gathered indicated compliance. The Committee therefore agreed that, in examining the responses to the next questionnaire, it would pay particular attention to Parties' answers regarding the implementation of Article 2, paragraph 6, Article 3, paragraph 8 (see also para. 16 above) and Article 6, paragraph 1, as well as responses indicating a lack of practical experience.

22. In addition, the Committee considered that the responses provided by one Party indicated difficulties with that Party's implementation of the Convention, and it requested that the Chair write to the Party concerned requesting information about its procedure for carrying out transboundary EIAs.

### **III. Structure and functions of the implementation committee when considering matters under the Protocol on Strategic Environmental Assessment**

23. The Committee considered a proposal elaborated by the Chair and Mr. Sauer further to the discussions on this issue at its previous meeting, together with comments by the Netherlands, representing the small working group on procedural and institutional issues under the Meeting of the Signatories to the Protocol, on the proposal.

24. The Committee discussed how the future Implementation Committee would consider matters under both the Convention and the Protocol after the first meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol. It was agreed that all members of the future Implementation Committee would participate in discussions and decisions on general agenda items and on matters related to both the Convention and the Protocol. All members would also participate in discussions on matters related to only one of the two treaties, but decisions on such matters would be taken only by those members appointed by Parties that had been elected to decide on matters related to that treaty.

25. The Committee agreed to recommend the following:

- a) The Meeting of the Parties shall elect eight Parties to the Convention, which shall each appoint a member of the Implementation Committee who shall decide on matters related to the Convention.
- b) At least four of these Parties shall also be Parties to the Protocol, and the members appointed by them shall also decide on matters related to the Protocol.
- c) The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol shall confirm the election of those Parties nominated by the Meeting of the Parties to the Convention that are also Parties to the Protocol.

- d) The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol shall also elect further Parties to the Protocol, which shall each appoint a member of the Implementation Committee who shall decide on matters related to the Protocol, so that there are a total of eight members deciding on such matters.
- e) A member appointed by a Party that has been elected to decide on matters related to only one of the two treaties – the Convention or the Protocol – shall not decide on matters related to the other treaty (even if the Party concerned later becomes a Party to the other treaty).
- f) A member appointed by a State that withdraws from either treaty shall no longer decide on matters related to that treaty.
- g) All members shall serve for two terms.

26. The Committee considered it important to ensure that the members adequately represented the regional distribution of the Parties to the instrument by which they had been nominated. The Committee agreed that the Chair should represent a Party to both instruments. If the Vice-Chair represented a Party to only one instrument, another Vice-Chair should be elected representing a Party to the other instrument.

27. The Committee agreed to recommend that the Committee's structure and functions be amended to reflect the Committee's functions under both instruments. The Committee requested the Chair and Mr. Sauer to clarify their proposal on the future Implementation Committee, but not to include proposals for an amended structure and functions at this stage. They were also requested to continue discussions with the Bureau and with the Netherlands and the United Kingdom, both members of the small working group on procedural and institutional issues under the Meeting of the Signatories to the Protocol, in advance of the next meeting of the Working Group on EIA.

#### **IV. Operating rules**

28. The Committee reviewed revised draft operating rules prepared by Mr. Sauer and Mr. Jendroska. The rules are based on the approach adopted for the Cartagena Protocol on Biosafety. The Committee considered that paragraph 5 of decision III/2 provided the mandate for the development of operating rules that could provide practical arrangements for the conduct of the Committee's meetings. The Meeting of the Parties would be asked to approve the draft operating rules as a separate legal document. The Committee discussed whether it would be able to develop further the rules in the period between meetings of Parties, and whether it would also be able to apply such revised rules, pending their approval by the Meeting of Parties, provided there were no potential contradictions with the Committee's structure and functions.

29. The Committee discussed the draft rules in detail and requested Mr. Sauer and Mr. Jendroska to revise the draft rules taking into account the comments made, to circulate a revised version by 24 February 2006 for further comment by the Committee until 3 March 2006, and to make the revised draft rules available to the next meeting of the Working Group on EIA. The revised draft rules will be made available in English and Russian by 20 March 2006. The Committee also decided to ask the advice of the Working Group on the Committee's mandate for developing the rules.

## **V. Other workplan activities**

### **A. Experience in public involvement**

30. The Committee agreed to discuss this issue at its next meeting, taking into consideration the discussion on public participation included in the report of its third meeting (MP.EIA/WG.1/2003/8) and the advice of the Working Group on EIA on the proposal in paragraphs 5 and 6 above. The Chair agreed to ask the Chair of the Aarhus Convention's Compliance Committee to provide information on that body's experience with communications from the public regarding Parties' compliance.

### **B. Encouraging self-referral**

31. The Chair and Ms. Spirovska agreed to prepare a draft form that Parties could use for self-referral.

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

32. The Committee asked the secretariat to begin drafting the Committee's report to the Meeting of the Parties, including the decisions made on compliance issues. The Committee will return to this issue at its next meeting.

### **D. Preparation of draft decisions for the Meeting of the Parties**

33. The Committee agreed that it should begin drafting decisions on the review of implementation, the review of compliance (including the structure and functions, possible operating rules and the report of the Committee to the Meeting of the Parties) and elements for the Convention's workplan and budget. The Committee requested the Chair, Ms. Spirovska, Ms. Shabaeva and Mr. Jendroska, with the support of the secretariat, to develop the draft decisions for consideration at its next meeting.

34. The Committee expressed its willingness to support preparations for the sixth Ministerial Conference "Environment for Europe" to be held in October 2007 in Belgrade.

## **VI. Frequency of future meetings of the Parties**

35. The Committee discussed an informal paper, prepared by the United Kingdom for the Working Group on EIA, regarding the frequency of future meetings of the Parties. It considered the impacts a change in frequency might have on the work of the Implementation Committee. The Committee considered that it could adjust as required to whatever frequency or level of meetings of the Parties was decided on. However, the longer the interval between meetings of the Parties, the greater would be the delay before the Meeting of the Parties could adopt the Committee's draft recommendations on specific compliance issues. In addition, a longer interval would further delay the examination of the Committee's report on the prior review of implementation. On the other hand, a longer interval would provide greater continuity in the Committee's membership. The Committee's structure and functions might need to be adjusted to

permit it to undertake certain actions with a view to addressing compliance issues in the intersessional period.

### **VIII. Other business**

36. The secretariat had received no submissions by Parties.

37. The secretariat provided an update on the ongoing inquiry procedure initiated at the request of Romania. This commission had most recently met on 16 December 2005 and would meet again on 16 March 2006. A site visit was foreseen for early May 2006, with the commission aiming to finalize its work, including its opinion, later that month. The Committee wished to receive the commission's opinion. The Committee agreed to decide, at its next meeting, whether paragraph 15 of the description of the Committee's structure and functions meant that a submission to the Committee was suspended or terminated because the matter was being considered under an inquiry procedure.

38. The Chair, representing a contracting Party to the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), provided an overview of the preparation of draft guidelines on transboundary EIA intended for use under the Helsinki Convention.

39. The secretariat reported on the possibility for Parties to complete future questionnaires via the Internet. The Committee considered that this possibility might be reflected in the draft decision on the review of implementation.

40. The Committee discussed the expansion of the questionnaire to include implementation of the Protocol, once the latter was in force, taking into account article 14, paragraphs 6 and 7, of the Protocol. The Committee decided to return to this matter at a later stage when more information about the entry into force of the Protocol was available.

41. The Committee acknowledged that the secretariat had circulated an article on the competencies of different compliance mechanisms and decided to revisit this important issue at a later stage.

42. The Committee decided to meet again in Berlin on 9–10 October 2006.

43. The Chair closed the meeting on Wednesday, 8 February 2006.