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Fifth session

Geneva, 20–23 June 2011

Items 6 and 11 (a) of the provisional agenda

Review of compliance, review of implementation and work done by the Implementation Committee

**Adoption of decisions: decisions to be taken by
the Meeting of the Parties**

Report on the activities of the Implementation Committee

Note by the Implementation Committee

Summary

The present report responds to the requirement in the workplan adopted at the fourth session of the Meeting of the Parties (decision IV/7, annex), which stipulates that the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context report on its activities to the fifth session of the Meeting of the Parties. This requirement is echoed in paragraph 11 of the description of the structure and functions of the Implementation Committee and procedures for the review of compliance, appended to decision III/2 (hereinafter referred to as the structure and functions). The Committee's recommendations to the Meeting of the Parties, presented in this report, were adopted unanimously.

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I. Introduction

A. Membership and sessions of the Implementation Committee

1. The members of the Committee and the Parties they represented were: Ms. Tatyana Javanshir (Azerbaijan); Ms. Nina Stoyanova (Bulgaria); Mr. Nenad Mikulic (Croatia); Mr. Matthias Sauer (Germany); Ms. Rakia Kalygulova (Kyrgyzstan); Mr. Jerzy Jendroska (Poland); Ms. Diana Bragoi, later Ms. Tatiana Plesco (Republic of Moldova); and Ms. Vesna Kolar-Planinsic (Slovenia). Croatia, Germany, Kyrgyzstan and Poland were elected to nominate members in the third session of the Meeting of the Parties, so members nominated by them were serving their second term; Azerbaijan, Bulgaria, Republic of Moldova and Slovenia were elected to nominate members in the fourth session of the Meeting of the Parties.

2. The Committee nominated Mr. Sauer as Chair of the Committee, and Ms. Bragoi and Ms. Kolar-Planinsic as its Vice-Chairs. Ms. Plesco replaced Ms. Bragoi from the nineteenth session, at which the Committee concluded that there was no need to elect a second Vice-Chair for the remaining period until the next session of the Meeting of the Parties.

3. The Committee held six sessions in the period between the fourth and fifth sessions of the Meeting of the Parties.¹ Reports of the Committee's sessions were made available to the Working Group on Environmental Impact Assessment and were published on the Convention website.

4. The Committee agreed that the decision of the Meeting of the Parties regarding financial assistance to representatives of countries with economies in transition (ECE/MP.EIA/10, decision IV/8, para. 4) applied to the funding of such representatives in relevant Committee sessions. However, the Committee considered that priority for funding would be accorded to members of the Committee, and that only if funds remained would requests for financial support for observers be considered on the merits of each request. The Committee considered that this matter should be taken up by the Bureau in the revision of the decision on financial assistance.

5. At the Committee's seventeenth session, in September 2009, the Committee asked the Chair to write to each Party represented in the Committee, reminding them of their commitments, specifically recalling rule 4, paragraph 2, of the Committee's operating rules (decision IV/2, annex IV), which specifies that members are expected to participate in every Committee session.

6. At the seventeenth and eighteenth sessions, the Committee asked the Chair to write to the Government of Azerbaijan because of the repeated absence of the member representing Azerbaijan. The absence of the member nominated by Azerbaijan placed an additional burden on the other members of the Committee, undermined the Committee's work and brought into question Azerbaijan's membership of the Committee. The member representing Azerbaijan recommenced participation at the nineteenth session. Following her reassurances that she expected to be present at future sessions, the Committee decided not to recommend to the fifth session of the Meeting of the Parties that Azerbaijan be replaced on the Committee.

¹ A brief additional session was planned to be held on 20 June 2011, immediately prior to the fifth session of the Meeting of the Parties.

B. Activities assigned to the Committee

7. The Meeting of the Parties took a number of decisions regulating the operation of and assigning activities to the Committee, which were carried out as described in this report. These decisions were:

(a) To establish the Committee for the review of compliance by the Parties with their obligations under the Convention with a view to assisting them fully to meet their commitments (decision II/4, para. 1);

(b) To decide on the structure and functions of the Committee and the procedures for review of compliance (decision III/2, para. 2);

(c) To request the secretariat to bring to the attention of the Committee general and specific compliance issues identified in the second review of implementation, and to request the Committee to take these into account in its work (decision IV/1, para. 4);

(d) To request the Committee to modify the previous questionnaire to provide a questionnaire on the implementation of the Convention in the period 2006–2009 (decision IV/1, para. 5);

(e) To decide that a failure to report on implementation might be a compliance matter to be considered by the Committee (decision IV/1, para. 8);

(f) To request the Committee to provide assistance to Parties in need of such assistance, as appropriate and to the extent possible (decision IV/2, para. 3);

(g) To adopt the operating rules of the Committee set out in annex IV to decision IV/2, including sources and criteria for dealing with information other than submissions from Parties (decision IV/2, para. 5);

(h) To keep under review and develop if necessary the structure and functions of the Committee, as well as the operating rules (decision IV/2, para. 6);

(i) To adopt the workplan for the implementation of the Convention and its Protocol on Strategic Environmental Assessment in the period up to the fifth session of the Meeting of the Parties, including to support Armenia in organizing a seminar on legislation and procedures for implementation of the Convention in Armenia (decision IV/7, para. 1);

(j) A number of dispositions regarding Ukraine (decision IV/2, paras. 7–14) and Armenia (decision IV/2, paras. 15–19).

II. Follow-up to decision IV/2

A. Ukraine

Committee reference: EIA/IC/S/1

1. Issue of caution

8. In October 2008, the Committee considered the question of whether to issue a caution to Ukraine, further to paragraph 10 of decision IV/2, and further to the January 2007 submission to the Committee by Romania regarding the project for the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian sector of the Danube Delta (the so-called Bystroe Canal Project, hereinafter “the Project”).

9. The Committee considered in particular whether the Government of Ukraine had fulfilled the conditions for not issuing the caution, set out in paragraph 10 of decision IV/2, i.e., whether it had:

- (a) Stopped the works;
- (b) Repealed the final decision;
- (c) Taken steps to comply with the relevant provisions of the Convention.

10. The Committee decided that the caution should not become effective. The Committee's deliberations are presented in the report of its fifteenth session (ECE/MP.EIA/IC/2008/2).

11. Nonetheless, the Committee decided to request the Government of Ukraine to report twice in writing to the Committee on steps taken to apply the relevant provisions of the Convention to:

- (a) Any further works related to Phase I of the Project, including operation and maintenance works;
- (b) Phase II of the Project.

12. In March 2009, the Committee reviewed the first report received from the Government of Ukraine. The Committee noted the report and the progress reported therein in the application of the Convention to Phase II of the Bystroe Canal Project. The Committee observed, however, that the report did not confirm that:

- (a) Work, including operation and maintenance, on Phase I had stopped;
- (b) Steps had been taken to apply the relevant provisions of the Convention to any further work related to Phase I of the Project.

13. On the contrary, the report, together with a press release by the Ministry of Transport and Communications of Ukraine, seemed to suggest that work under Phase I had continued. On the understanding that the information in the press release was correct, the Committee considered that this would be contrary to the requirements imposed by the Convention when deciding that the caution should not become effective, and would represent a continuing breach of the Convention. Moreover, the Committee was concerned that the above-mentioned press release stated that work had been carried out under Phase II, and that the report of the Government of Ukraine omitted mention of this Phase II work. The Committee was of the opinion that this would represent a further breach of the Convention.

14. The Committee therefore requested, through the Executive Secretary of the Economic Commission for Europe, the Government of Ukraine to provide a written statement confirming clearly and unambiguously that the conditions imposed in the decision of the Meeting of the Parties had been met. In particular, the statement was to:

- (a) Demonstrate that all works, including operation and maintenance, on Phase I had stopped;
- (b) Show, separately for Phase I and for Phase II, that the Convention was being applied fully to the Project.

15. In September 2009, the Committee examined, among other information, a letter to the Executive Secretary of the Economic Commission for Europe from the Deputy Prime Minister of Ukraine, and the second report referred to in paragraph 11 above (see ECE/MP.EIA/IC/2009/4).

16. The Committee found that Ukraine remained in non-compliance with its obligations under the Convention with respect to both phases of the Project. The Committee concluded that its earlier decision that the caution should not become effective had been based on information that proved not to be comprehensive. Therefore the caution should have become effective on 31 October 2008. The Committee was uncertain of the legal consequences of such a conclusion after 31 October 2008, and of its mandate issued by the fourth session of the Meeting of Parties in this respect. Thus, the Committee decided that this conclusion should be communicated to the next session of the Meeting of the Parties, with a recommendation that the Meeting of the Parties either bring into effect the caution issued in its fourth session or issue a new caution.

17. Moreover, the Committee disagreed with the interpretation by the Government of Ukraine that the environmental impact assessment (EIA) only need address project elements identified by the Inquiry Commission as likely to have significant adverse impact. The EIA had to cover the environmental impact of the entire proposed activity, and not address only the likely significant adverse transboundary impacts identified by the Inquiry Commission. The Committee emphasized that the Inquiry Commission's role was to determine whether the whole Project required application of the Convention, and not to determine the scope of the assessment.

18. The Committee closed consideration of the submission pending a decision by the Meeting of the Parties and decided that it would no longer consider information provided by the concerned Parties regarding the Project. The Committee decided that the secretariat should ask the Governments of Romania and Ukraine for their agreement to make publicly available the following documents relating to the original submission by Romania: the submission by Romania; the reply by Ukraine; the clarifications provided by both Parties; and the comments by both Parties on the draft findings and recommendations. Romania agreed, but Ukraine did not respond to the request.

2. Independent review

19. The Committee asked the secretariat to make the necessary arrangements to undertake an independent review of legal, administrative and other measures of Ukraine to implement the provisions of the Convention for consideration by the Committee in the first half of 2009, having selected a consultant.

20. Ukraine was given the opportunity to provide factual corrections to the draft review. The finalized review was sent to the Government of Ukraine for it to use as the basis for its strategy to implement the Convention.

21. The Committee welcomed the finalized review (ECE/MP.EIA/IC/2009/5). The consultant presented a "vision" for Ukraine's implementation of the Convention and emphasized that Ukraine should develop its own mechanism for achieving that vision. The Committee highlighted the need for clearly defined provisions on the screening procedure, on the competent authority or authorities and on the final decision.

3. Strategy

22. The Meeting of the Parties had requested the Government of Ukraine to submit to the Committee by the end of 2009 a strategy, taking into account the efforts by the Government to implement the provisions of the Convention and based on the outcome of the independent review, and thereafter to report to the Committee on the implementation of the strategy.

23. The Committee considered it important that the strategy should provide substance as well as planned actions, including a detailed description of provisions in planned legislation and of planned actions, a precise time schedule and responsibilities for implementation. The

provisions in planned legislation should react to the Committee's earlier findings and recommendations (decision IV/2, annex I). The Committee requested that the Government of Ukraine include in its strategy a point-by-point response to the independent review's recommendations.

24. In February 2010, the Committee considered Ukraine's strategy and the accompanying explanatory notes. The Committee also considered the strategy as adopted by resolution of the Cabinet of Ministers of Ukraine. The Committee appreciated the strategy and other documents received. Nonetheless, the Committee requested that the deadline and responsible authority be identified for each action in the strategy. The Committee recommended that as many provisions of the Convention as possible should be implemented in legislation, not in subordinate regulations, and that non-construction activities listed in appendix I to the Convention be covered by the strategy. The Committee also requested information on the status of the expected revision of regulations on public participation and asked for confirmation that the strategy would be implemented in line with the explanatory notes.

25. In September 2010, the Committee considered a response to its previous enquiry, and asked Ukraine to provide updated information on the implementation of the strategy, reporting progress in drafting or adopting legislation referred to in the strategy, as well as the planned decree on public participation, and indicating and explaining any changes to the schedule in the strategy. The Committee also requested an updated schedule for the strategy and copies of any relevant drafts or acts.

26. In January 2011, the Committee was pleased to receive Ukraine's report and took note of its content. The Government of Ukraine had needed to postpone implementation of the strategy because of administrative reform in Ukraine. The Committee was concerned that the implementation of the strategy might be a lengthy procedure, with the revised dates for implementation extending to February 2012. It requested to see the latest version of the strategy, with the revisions incorporated. The Committee also considered it important that Ukraine provide a legal framework for public participation in EIA in general, not limited to the transboundary context, as this was necessary to satisfy the requirements of the Convention, and therefore requested again to be informed about the progress with adopting the planned decree on public participation. It also requested to be informed what would be the screening mechanism for determining a likely significant adverse transboundary impact. Further, the Committee reminded the Government of Ukraine that it would be important for it to submit information at the fifth session of the Meeting of the Parties on the steps it had taken to bring it into compliance with the Convention, in particular concrete legal steps already taken including the entry into force of legislation, and to provide a clear indication of when the strategy would be implemented in full.

4. Bilateral agreements or other arrangements

27. The Meeting of the Parties had invited the Government of Ukraine to enter into negotiations with its neighbouring Parties to cooperate in the elaboration of bilateral agreements or other arrangements in order to support further the provisions of the Convention, as set out in article 8, and to seek advice from the secretariat. The Government of Ukraine was invited to report on progress with the elaboration of such agreements, particularly with Romania, to the Implementation Committee by the end of 2010 and to the fifth session of the Meeting of the Parties.

28. In February 2010, the Committee took note of the letters sent by Ukraine to neighbouring States proposing the negotiation of bilateral agreements or other arrangements. The Committee wished to receive an update on the status of the negotiations.

29. In September 2010, the Committee again asked the Government of Ukraine to provide updated information on the status of negotiation of the bilateral agreements, including a list of meetings held with each State for that purpose, specifying the dates and locations of such meetings. The Committee also asked that the Government of Ukraine attach any draft agreements. A representative of Romania reported that her Government had written to the Government of Ukraine that it would not proceed with negotiation of a bilateral agreement as long as Ukraine did not fulfil its obligations under the Convention with respect to the Bystroe Canal Project.

30. In January 2011, the Committee was pleased to have received information on steps taken by the Government of Ukraine to negotiate bilateral agreements with neighbouring Parties. The Committee urged the Government of Romania to reconsider its opposition to the negotiation of a bilateral agreement with Ukraine.

5. General conclusions

31. The Committee, when reviewing the documents received in relation to the follow-up to decision IV/2 regarding Ukraine, drew two more general conclusions regarding application of the Convention by Parties.

32. Firstly, the Committee was of the opinion that if the conditions attached to a decision can be altered subsequently by other decisions, the former cannot be considered the “final decision” in the meaning of the Convention.

33. Secondly, the Committee made clear that the opinion of an inquiry commission that an activity is likely to have a significant adverse transboundary impact is final inasmuch as it decides that the transboundary EIA procedure foreseen in the Convention must be applied in full, beginning with the immediate notification of the affected Party. The final opinion is a matter of fact and takes effect immediately; in particular the Convention does not provide for the Parties to “study” such an opinion. The final opinion of an inquiry commission cannot be challenged. The procedure may be stopped only if either (a) the planned activity is abandoned, or (b) the affected Party indicates that it does not wish to participate. Any subsequent studies or analyses, including findings of the EIA documentation prepared in accordance with article 4 and appendix II to the Convention, by no means have any effect on the validity of the respective opinion of the inquiry commission, even if they show no actual significant adverse transboundary impact of the activity in question.

B. Armenia

Committee reference: EIA/IC/CI/1

1. Revision of legislation

34. The Committee discussed the nomination and financing of a consultant to undertake technical assistance in drafting the necessary legislation to support Armenia in ensuring its full implementation of the Convention, further to decision IV/2 and to the Committee initiative on Armenia. The Committee nominated the same consultant who had provided a review of Armenian legislation for the Committee in 2007. That review had formed the basis for the Committee’s findings and recommendations further to a Committee initiative on Armenia (decision IV/2, annex II).

35. In September 2009, the Committee welcomed the report by the consultant. The Committee also welcomed the work of the Government of Armenia, supported by the consultant, to prepare new draft legislation in accordance with the Committee’s earlier findings and recommendations. Further, the Committee welcomed the new draft legislation as providing a suitable framework for the implementation of the Convention in Armenia.

36. The Committee endorsed the recommendations to Armenia set out in the consultant's report. In particular, it encouraged the provision in the draft legislation of the time periods for public participation set out in the consultant's report. Further to decision IV/2, the Committee requested the Government of Armenia to revise its legislation in accordance with the above-mentioned draft.

2. Report by Armenia

37. Further to decision IV/2, the Committee requested the Government of Armenia to report in writing on:

(a) The concrete steps taken and planned to be taken by the Government of Armenia to enact and implement the amended legislation;

(b) Other measures taken and planned to be taken by the Government of Armenia to apply the Convention, such as the carrying out of a pilot project or the elaboration of a bilateral agreement to support implementation of the Convention.

38. The Committee asked that the Government of Armenia report in particular on specific steps taken to address each of the recommendations in the consultant's report.

39. In February 2010, the Committee considered the report received from the Government of Armenia, and asked for more details on the timing of all the steps planned to be taken to implement fully the Convention. In September 2010, the Committee requested Armenia to provide updated information on how the legal procedure had progressed with respect to the draft law on EIA.

40. In January 2011, the Committee considered updated information from the Government of Armenia. It requested Armenia to provide an official copy of the revised legislation, once adopted. The Committee took note of the information provided by Armenia and the secretariat regarding the application of the Convention to a planned nuclear power plant in Armenia, and regarding the proposed holding of a subregional workshop in Tbilisi in 2011.

III. Examination of the outcome of the second review of implementation

41. The secretariat presented an informal document to the Committee highlighting general and specific compliance issues identified in the second review of implementation (decision IV/1, annex), and in the completed questionnaires on which it was based. The Committee took this document into account in its work, as requested in Meeting of the Parties decision IV/1 (para. 4).

A. General compliance issues

42. The Committee agreed that each member would examine a part of the second review to identify additional possible general compliance issues. The Committee later considered that, when examining general compliance issues in the third review of implementation, the Committee should report on progress made as compared with the second review of implementation.

1. General provisions (article 2), including public participation

43. The Committee expressed its opinion that:

(a) A domestic regulatory framework was necessary for implementation of the Convention, especially with respect to public participation;

(b) The organization of public participation under the Convention was the responsibility of the competent authority and not of the proponent. Nevertheless, it might be possible under national systems that the competent authority and the proponent would organize the public participation together. However, the proponent should not be responsible for public participation without the competent authority;

(c) The concerned Parties had a common responsibility for providing equivalent opportunities for public participation in the affected Party, including accurate and effective notification of the public. In that context, while recognizing the lack of administrative powers of the Party of origin's competent authority on the territory of the affected Party, at a minimum it had to provide the possibility for the public of the affected Party to participate in the procedure of the Party of origin (ECE/MP.EIA/IC/2010/2, para. 37). The Party of origin's competent authority should furthermore support the affected Party's competent authority in providing effective participation for the public of the affected Party in the procedure for transboundary EIA;

(d) Synergies should be sought with national reporting on implementation of article 6 of the Aarhus Convention (on public participation), given that the corresponding field of application and the membership of the Conventions were each almost identical under the two treaties;

(e) When revising further the questionnaire on the implementation of the Convention, particular attention should be given to addressing the above-mentioned issues and to ensuring that Parties identified relevant legal provisions when asked, rather than indicating their practical experience, and while noting that public hearings were not the only means of assuring public participation under the Convention;

(f) Bilateral agreements could resolve many issues relating to public participation, as foreseen by the Convention. Issues to be addressed in bilateral agreements might be elaborated in updated guidance on elements to be raised in bilateral agreements.

44. Further, and recalling an earlier opinion on the necessary translation of documentation (ECE/MP.EIA/IC/2010/2, para. 35), the Committee was of the opinion that during the procedure for transboundary EIA the concerned Parties should share the responsibility for ensuring that the opportunity provided to the public of the affected Party was equivalent to that provided to the public of the Party of origin, including access to at least relevant parts of the documentation in the appropriate language of the affected Party. That was in addition to their responsibility to provide the possibility of access to the full and final EIA documentation in the original language or languages, until the procedure ended and no earlier than when the final decision had been provided to the public in the affected Party. Further, copyright protection should not be considered as allowing for the prevention of the public availability of the full EIA documentation.

45. The Committee reported to the Working Group on the limited use of the guidance on public participation (ECE/MP.EIA/7).

2. Notification (article 3)

46. The Committee recommended that Parties should notify potentially affected Parties as early as possible and at the stage of determining case by case the content of the EIA

documentation (“scoping”), where applicable, so that the EIA documentation could meet the needs of the affected Party.

47. The Committee considered that Parties, either individually or through bilateral or multilateral agreements or other arrangements, might find useful to establish a list of activities, with thresholds if appropriate, that should automatically be subject to notification.

3. Preparation of the environmental impact assessment documentation (article 4)

48. The Committee recommended that the Party of origin involve the affected Party in any scoping procedure.

4. Consultation (article 5)

49. The Committee recommended that:

(a) If the concerned Parties do not have bilateral or multilateral agreements covering such issues, they should agree at the start of the transboundary EIA procedure, when sending or responding to the notification, on:

(i) The language or languages for correspondence and of the EIA documentation;

(ii) The timing of, and means for carrying out, consultations under article 5;

(b) Parties refer to the guidance on the practical application of the Convention (ECE/MP.EIA/8, section 2.9).

50. The Committee concluded that there was often a misunderstanding about the meaning of “consultations” with respect to article 5. The Committee underlined that article 5 provides for specific consultations after completion of the EIA documentation.

5. Final decision (article 6)

51. The Committee made recommendations to the Parties on good practice:

(a) Information about possibilities to appeal should be included by the Party of origin in the final decision, as suggested in the guidance on the practical application of the Convention. This is a legal requirement in many Parties;

(b) The concerned Parties should agree, at the latest during the EIA procedure, on the whether the final decision will be translated and, if so, whether the whole final decision will be translated or only specific parts;

(c) The final decision should always be submitted as a paper document but, if the affected Party so requests, the final decision should also be transmitted electronically.

52. Further, in the light of article 3, paragraph 8, the Committee came to the conclusion that there was an obligation to inform the public concerned in the affected Party of the final decision.

6. Post-project analysis (article 7)

53. The Committee recommended that Parties include monitoring conditions in their final decisions when applying the Convention.

7. Bilateral agreements (article 8)

54. While recognizing the merits of bilateral and multilateral agreements, the Committee also recommended that in cases where bilateral agreements were inappropriate Parties

should consider developing informal agreements, such as bilateral guidelines, common declarations and memorandums of understanding.

8. Research programmes (article 9)

55. The Committee decided to remind Parties of their obligation to exchange the results of research programmes in accordance with article 9, and to encourage them to exchange such results through the mechanisms for the exchange of information under the workplan of the Convention. This obligation should be fulfilled through, among other means, national reporting on the implementation of the Convention.

B. Specific compliance issues

56. The Committee examined 10 specific compliance issues, as summarized in table 1. Besides specific recommendations detailed below, the Committee observed that Parties should report more precisely on their implementation of the Convention (ECE/MP.EIA/IC/2009/2, para. 32).

57. The Committee was satisfied with the clarifications provided by Albania, Austria, Belgium, Greece, Hungary, Latvia, Liechtenstein and Slovenia. The Committee noted the observation by several Parties that the thresholds indicated in appendix I to the Convention are quite high.²

58. The Committee agreed to remind all Parties to the Convention of two important provisions:

(a) Article 2, paragraph 5, of the Convention, which provides for the application of the Convention to activities not listed in appendix I but that are likely to cause a significant adverse transboundary impact;

(b) Article 1, item (v), which defines a “proposed activity” to mean “any activity or any major change to an activity...”, thus, for example, including the modernization of motorways and express roads.

1. Regarding Albania

Committee reference: EIA/IC/SCI/2/1

59. The Committee was satisfied with a revised national report on Albania’s implementation of the Convention for the period from 2003 to 2005, and expected that Albania would report fully on its practical application of the Convention when completing the questionnaire on the implementation of the Convention for the period from 2006 to 2009.

2. Regarding Greece

Committee reference: EIA/IC/SCI/2/2

60. The Committee was satisfied with the clarification provided by Greece, including information on its experience as an affected Party, but brought to Greece’s attention the Committee’s observations that:

² The Meeting of the Parties replaced appendix I through an amendment adopted in decision III/7, but this amendment has yet to enter into force.

(a) An extended time period between a final decision and works might bring into doubt the validity of the EIA and thus the final decision;

(b) Modernization of a motorway or express road might often constitute a major change to the motorway or express road.

Table 1
Specific compliance issues

<i>Party concerned</i>	<i>Committee reference</i>	<i>Issue</i>
Albania	EIA/IC/SCI/2/1	Did not return prior to the fourth session of the Meeting of the Parties a completed questionnaire on its implementation of the Convention in the period 2003–2005.
Greece	EIA/IC/SCI/2/2	Had not notified any Party under the Convention in the period 2003–2005 despite having a relevant level of economic activity (reflected in gross domestic product), a relevant population density and land borders with other Parties.
Slovenia	EIA/IC/SCI/2/3	Had not notified any Party under the Convention in the period 2003–2005 despite having a relevant level of economic activity, a relevant population density and land borders with other Parties.
Austria	EIA/IC/SCI/2/4	Had notified a Party only once under the Convention in the period 2003–2005 despite having a relevant level of economic activity, a relevant population density and land borders with other Parties.
Hungary	EIA/IC/SCI/2/5	Had notified a Party only once under the Convention in the period 2003–2005 despite having a relevant level of economic activity, a relevant population density and land borders with other Parties.
Belgium	EIA/IC/SCI/2/6	The Walloon region of Belgium had no experience in application of the Convention in the period 2003–2005.
Hungary	EIA/IC/SCI/2/7	The response to the questionnaire could indicate that Hungary's legislation does not require the identification of "reasonable alternatives".
Latvia	EIA/IC/SCI/2/8	The response to the questionnaire could indicate that Latvia's list of activities subject to the transboundary EIA procedure was not equivalent to that in appendix I to the Convention.
Liechtenstein	EIA/IC/SCI/2/9	The response to the questionnaire could indicate that Liechtenstein's EIA procedure, whether or not transboundary, did not influence the decision-making process for a proposed activity.
Azerbaijan	EIA/IC/SCI/2/10	The response of Azerbaijan to the questionnaire could indicate that there was no national legislation on the application of the Convention.

3. Regarding Hungary

Committee reference: EIA/IC/SCI/2/7

61. The Committee received confirmation from Hungary that the Government planned to amend the national EIA regulation to make clear the requirement for a description, where appropriate, of reasonable alternatives. The Committee looked forward to receiving confirmation of the regulatory amendment in Hungary's report on its implementation of the Convention for the period from 2006 to 2009.

4. Regarding Azerbaijan

Committee reference: EIA/IC/SCI/2/10, EIA/IC/CI/2

62. The Committee noted that the response of Azerbaijan to the questionnaire indicated that there was no national legislation on the application of the Convention. The Committee recalled that it had considered that the provision in the Constitution to directly apply international agreements as being insufficient for proper implementation of the Convention without more detailed provisions in the legislation (decision IV/2, annex I, para. 64). It therefore sought clarification on how Azerbaijan implements the Convention. Having confirmed a lack of national legislation for transboundary EIA, Azerbaijan requested the assistance of the Committee in reviewing current and draft legislation on EIA.

63. The Committee decided that this matter was thus the subject of a Committee initiative, and it is therefore discussed further in chapter VI below.

IV. Submissions by Parties

64. There were no submissions by Parties regarding their own compliance, but one by a Party having concerns about another Party's compliance.

By Ukraine regarding Romania

Committee reference: EIA/IC/S/2

65. Ukraine made a submission to the Committee regarding concerns about Romania's compliance with its obligations under the Convention with respect to inland waterways in the Romanian Sector of the Danube Delta, which permit the passage of vessels of over 1,350 tons. The secretariat received the submission on 6 March 2009 and, on the same day, sent a message to the focal point of Romania, forwarding the submission in conformity with paragraph 5 (a) of the Committee's structure and functions (ECE/MP.EIA/6, annex II, appendix).

66. The Committee contacted the Governments of Romania and Ukraine, asking for further information on the activities outlined in the submission by Ukraine. The Committee also invited the two Parties to a Committee session, where the Committee would begin its consideration of the submission.

67. In September 2009, the Committee considered a reply by the Government of Romania to the submission and clarifications provided by the Governments of Romania and of Ukraine. The Committee invited the delegation of Ukraine to present its submission and the delegation of Romania to respond. The Committee then questioned the two delegations.

68. The Committee then drafted its findings and recommendations and agreed to send them to the two Parties. In accordance with paragraph 9 of the Committee's structure and

functions, the Committee asked its Chair to invite the two Parties to submit to the secretariat their comments or representations, which would remain confidential. The Committee agreed to consider any comments or representations at its next session before finalizing its findings and recommendations for consideration by the Meeting of the Parties.

69. At its next session, in February 2010, the Committee reviewed the comments received from Romania and Ukraine. Having completed its findings and recommendations as provided in the annex to the session report (ECE/MP.EIA/IC/2010/2), the Committee requested the secretariat to bring them to the attention of the concerned Parties once issued as an official document.

70. The Committee asked the Governments of Romania and Ukraine for their agreement to make publicly available the following documents relating to the submission by Ukraine: the submission by Ukraine, the reply by Romania, the clarifications provided by both Parties and the comments by both Parties on the draft findings and recommendations. Romania agreed, but Ukraine did not respond to the request.

V. Information from other sources

71. The Committee received information from sources other than Parties, further to operating rule 15 (1).

72. The Committee pointed out that the Committee initiative procedure was not available to Parties to the Convention having concerns about other Parties' compliance with the Convention. Instead, a Party having such concerns might make a submission to the Committee and, where such concerns related to the application of the Convention to a particular proposed activity, the submission should only be made once the final decision on the activity had been taken.

73. As a result of its deliberations on the information received, the Committee proposed to include in the new workplan the development of general guidance on resolving a possible systemic inconsistency between the Convention and environmental assessment within the framework of State ecological expertise systems.

A. Regarding Romania

Committee reference: EIA/IC/INFO/1

74. The Committee reviewed information provided by the Government of Ukraine, several Ukrainian non-governmental organizations (NGOs) and the secretariat regarding ongoing and planned navigation activities in Romania upstream of the Danube delta. The Committee requested Romania to clarify whether, how and when the Convention would be applied to those activities within the National Territory Master Plan of Romania, adopted in 2006, relating to navigation on the Danube River. The Committee examined the reply from the Government of Romania and was of the opinion that the ongoing procedure appeared to be in line with the Convention.

B. Regarding Ukraine

Committee reference: EIA/IC/INFO/2

75. The Committee reviewed information provided by the secretariat regarding a pumped storage hydropower plant on the Dniester River in Ukraine upstream of the Republic of Moldova. The Committee agreed that it would gather further information by

writing to Ukraine to seek information regarding the State expertise, permitting or consent, as well as EIA procedures (including in a transboundary context).

76. The Committee considered the reply by the Government of Ukraine. The secretariat reported to the Committee that, during an advisory mission to Ukraine, the Government of Ukraine had expressed willingness to share non-confidential information on the activity. On the basis of the above-mentioned information, and bearing in mind that the Convention does not have retroactive effect, the Committee decided not to consider the information further and requested the Chair to write to Ukraine accordingly.

77. The Committee nevertheless expressed its concern that the long time period between decision-making and construction raised questions about the validity of the EIA and of the subsequent decision. Further, because of the importance of bilateral cooperation, and because of the power station's likely significant adverse transboundary impact and resulting widespread concern in the Republic of Moldova, the Committee would encourage the exchange of information and the carrying out of post-project analysis. Finally, the Committee reminded the Government of Ukraine of the Meeting of the Parties' decision to invite the Government of Ukraine to enter into negotiations with its neighbouring Parties to cooperate in the elaboration of bilateral agreements or other arrangements in order to support further the provisions of the Convention.

C. Regarding the Republic of Moldova

Committee reference: EIA/IC/INFO/3

78. The Committee reviewed information provided by the secretariat regarding development of Giurgiulesti Port in the Republic of Moldova, close to the borders with Romania and Ukraine. The Committee agreed that it would gather further information by writing to the Republic of Moldova, Romania and Ukraine to seek concise procedural information.

79. The Committee noted the replies of the Governments of the Republic of Moldova, Romania and Ukraine, and twice sought further clarification from the Government of the Republic of Moldova. The Committee decided finally not to begin a Committee initiative as there was insufficient evidence of non-compliance.

D. Regarding Belgium and the Netherlands

Committee reference: EIA/IC/INFO/4

80. The Committee reviewed information provided by a Dutch NGO regarding a proposed thermal power plant in Belgium close to the border with the Netherlands. The Committee agreed that it would gather further information on whether or not efforts had been made for proper public participation in the affected Party (the Netherlands), e.g., by contacting the concerned Parties.

81. The Committee considered replies by the Governments of Belgium and the Netherlands and decided not to begin a Committee initiative further to the information provided, as there was insufficient evidence of non-compliance. Nonetheless, the Committee noted that some aspects of the practical application of the Convention to the activity did not necessarily constitute good practice and therefore decided to make some observations, as presented in the session report (ECE/MP.EIA/IC/2010/2, paras. 33–40).

E. Regarding Belarus

Committee reference: EIA/IC/INFO/5

82. The Committee reviewed information provided by a Ukrainian NGO, EcoClub, regarding a proposed activity in Belarus close to the border with Lithuania. The Committee agreed that it would gather further information on whether there had been proper application of the Convention and whether the Government of Belarus had taken the necessary measures to implement the provisions of the Convention. The Committee also contacted affected Parties identified by the NGO (Latvia, Lithuania, Poland and Ukraine) to enquire into their experiences, if any, in the application of the Convention to the proposed activity.

83. The Committee considered replies by the Governments of Belarus, Latvia, Lithuania, Poland and Ukraine, as well as unsolicited information from Lithuania, and twice sought further clarification from the Government of Belarus. In January 2011, the Committee was concerned that the supplied preliminary and final EIA documentation differed significantly. It observed that this might be a reflection of a more general systemic inconsistency between the Convention and environmental assessment within the framework of State ecological expertise systems. The Committee therefore agreed to discuss this issue further with Belarus. In addition, the Committee recommended that Belarus provide the final EIA documentation to the affected Parties and allow an adequate period for them to submit further comments, before proceeding with the final decision on the proposed activity.

F. Regarding Slovakia

Committee reference: EIA/IC/INFO/6

84. The Committee considered information provided by Ukraine, and earlier by the secretariat, regarding a proposed activity in Slovakia. The Committee sought and received, from the Governments of Slovakia and Ukraine, clarification of the transboundary EIA procedure for the proposed activity.

85. The Committee decided that it would not examine Slovakia's compliance with the provisions of the Convention on notification, as Slovakia had accepted Ukraine's participation in the procedure for transboundary EIA.

86. The Committee recalled decision I/3 by which the Meeting of the Parties had agreed that notifications should be transmitted to the relevant points of contact, unless otherwise provided for in bilateral or multilateral agreements or other arrangements. The Committee recommended that Parties should retain records of the means of communication, dates and addresses, and that communications should be sent in parallel by other means (e.g., by post and e-mail).

87. In September 2010, the Committee decided not to begin a Committee initiative further to additional information provided by Slovakia as there was insufficient evidence of non-compliance. Nonetheless, the Committee made several observations and recommendations of a general nature, as presented in the session report (ECE/MP.EIA/IC/2010/4, paras. 27–31).

88. The Committee asked the secretariat to contact the Government of Ukraine through various channels to request updated information on Ukraine's focal point and point of contact.

VI. Committee initiative

Regarding Azerbaijan

Committee reference: EIA/IC/CI/2

89. Further to its consideration of a specific compliance issue (para. 62 above), and in view of the assistance-oriented nature of the Convention's compliance procedures and referring to the Committee initiative, the Committee decided to explore possibilities to provide technical advice to review in detail the current and draft Azerbaijani legislation on EIA. With the observations resulting from the proposed advice, the Committee might make recommendations on measures to strengthen Azerbaijani legislation.

90. The Committee decided that the Chair would make practical arrangements for the proposed advice, with the support of the secretariat, and invited the Government of Azerbaijan to provide additional relevant information. The Government responded positively to the above proposal. The Committee presented the draft terms of reference for a consultant to provide the technical advice and requested the Government of Azerbaijan to contact the secretariat to complete the practical arrangements.

91. In January 2011, the Committee took note of information provided by the secretariat regarding the agreement by the Government of Azerbaijan to a project to implement the proposed technical advice. It also took note of the second Environmental Performance Review of Azerbaijan (ECE/CEP/158) and encouraged Azerbaijan to implement its recommendations with respect to EIA and strategic environmental assessment.

VII. Revised questionnaire

92. The Committee was expected to provide a revised questionnaire for the period 2006–2009, as a modification of the earlier questionnaire on the implementation of the Convention for the period 2003–2005, for consideration by the Working Group (decision IV/1, para. 5). The Committee agreed that the findings of the second review (listed in decision IV/1, para. 3) should also be taken into account in its work and reflected in the revised questionnaire. The revised questionnaire would ask what Parties were doing to address these issues, or to explain why no action was envisaged. The Committee modified the questionnaire accordingly. It also prepared a draft detailed timetable for the submission of completed revised questionnaires, and for the generation of the subsequent review of implementation, to be put before the Working Group (decision IV/2, annex III, para. 53).

93. The Working Group agreed on the questionnaire and the detailed timetable. The secretariat then issued the questionnaire. Parties sent in completed questionnaires, on the basis of which the secretariat drafted the third review of implementation. In January 2011, the Committee took note that only Albania had not submitted a completed questionnaire. The Committee indicated to the Government of Albania it would bring Albania's failure to report to the attention of the Meeting of the Parties at its fifth session, and urged Albania to submit the completed questionnaire. The Committee decided that it would later consider whether Albania's failure to report was an issue of non-compliance with the Convention.

VIII. Structure and functions, operating rules and workload

A. Structure and functions

94. The Committee agreed not to propose revision of its structure and functions and procedures for the review of compliance.

95. The Committee sought clarification from the Directorate-General for the Environment of the European Commission on the Commission's previous view that European Union (EU) law does not preclude an EU member State, having concerns about another EU member State's compliance with its obligations under the Convention, from making a submission to the Committee.

B. Operating rules

96. The Committee agreed that the secretariat routinely ask sources of other information, further to operating rule 15, paragraph 1 (b), whether the information supplied might be made available on the Convention website.

97. At the request of the Committee, the secretariat prepared a proposal on amending rule 16 of the operating rules, which provided for the publication of documents and information, to enable the early release of non-confidential information. Having amended the proposal, the Committee agreed that it be included in the draft decision on the review of compliance.

C. Workload

98. The Committee's workload increased greatly in the most recent intersessional period, necessitating the holding of sessions lasting up to five days. Table 2 provides an approximate overview of the time spent by the Committee on its various tasks as described in this document. The Committee decided to request that the Bureau take action to increase secretariat resources to deal with the growing workload in servicing the sessions of the Committee.

IX. Outreach

99. The Committee undertook various efforts to raise awareness of its work and to assist Parties in their implementation of the Convention. It continued to request publication on the Convention website of the Committee's correspondence and information related to compliance issues. Members of the Committee also spoke on the implementation of the Convention in various events, for example:

(a) Mr. Jendroska spoke at Turkey's first national EIA workshop (February 2009);

(b) Mr. Mikulic spoke at a subregional workshop, presenting results of a pilot project involving Kazakhstan and Kyrgyzstan (March 2009);

(c) Ms. Kalygulova and Ms. Plesco spoke at a national seminar on legal implementation of the Convention in Tajikistan (July 2010);

(d) Mr. Sauer and Mr. Jendroska spoke at a conference in Leuven, Belgium, celebrating the twenty-fifth anniversary of the adoption of the EU Directive on EIA³ (November 2010).

Table 2

Overview of the time spent by the Committee on its key tasks

<i>Task</i>	<i>Approximate proportion of Committee time in session</i>
Follow-up to decision IV/2	25%
Examination of the outcome of the second review of implementation	15%
Consideration of submissions by Parties	15%
Consideration of information from other sources	20%
Committee initiative	<5%
Preparation of the revised questionnaire	<5%
Review of the structure, functions and operating rules	<5%
Preparation for the fifth session of the Meeting of the Parties	10%
Outreach	<5%
Total	100%

100. The Committee appreciated the preparation by the secretariat of a leaflet briefly introducing the Committee and its role, and presenting the possibility for bodies and individuals to provide information to the Committee. The Committee also commented on a draft booklet introducing the Convention, prepared by the secretariat.

101. The Committee requested the secretariat to publish a compilation of guidance to assist Parties in the notification procedure under the Convention and subsequently took note of its publication (ECE/MP.EIA/12).

102. The European Bank for Reconstruction and Development had prepared a checklist for international financial institutions on projects with transboundary impacts. The Committee proposed to the Bureau that it consider including in a draft decision before the Meeting of the Parties a request to the secretariat to promote the use of the checklist by other international financial institutions.

103. Finally, the Committee supported a proposal by the secretariat that the opinions of the Committee be made available in a more accessible format than in the reports of Committee sessions. This proposal was brought to the attention of the Working Group during preparation of the draft workplan for consideration by the fifth session of the Meeting of the Parties.

³ Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.