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

Fifth session

Geneva, 20–23 June 2011

Items 1, 3 (e) and 11(a) of the provisional agenda

Opening of the session

Outstanding issues: other draft decisions

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

Compendium of draft decisions forwarded for adoption by the Meeting of the Parties to the Convention

Proposal by the Bureau

Summary

This compendium of draft decisions was prepared by the Bureau of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, with the support of the Convention secretariat, as requested by the Working Group on Environmental Impact Assessment at its fourteenth meeting. Draft decision V/1 was prepared on the basis of a text agreed by the Working Group at its thirteenth meeting. Draft decision V/2 was prepared on the basis of decision III/1 by the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MP.PP/2008/2/Add.3).

Draft decision V/1

(to be considered by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context at its fifth session)

Amendment of rule 7 of the rules of procedure

The Meeting of the Parties to the Convention,

Considering that rule 7 of the Rules of Procedure of the Convention (adopted in decision I/1, ECE/MP.EIA/2, annex I) should be interpreted in a constructive manner, taking into account the context of each specific case,

Believing that private companies, developers and others may provide valuable input to the deliberations of Parties in meetings under the Convention,

1. *Decides* to amend rule 7 of the Rules of Procedure of the Convention through the addition of a paragraph that reads:

3. Paragraphs 1 and 2 shall be applied mutatis mutandis to a researcher, commercial firm, developer, consultant or other commercial entity that is invited with the agreement of the Bureau to participate as an observer in a specific meeting, or in discussions on one or more specific agenda items of a specific meeting.

Draft decision V/2

(to be considered by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context at its fifth session)

Interpretation of article 14 of the Convention (amendments)

The Meeting of the Parties to the Convention,

Recalling its decision II/14 through which an amendment to the Convention was adopted,

Recalling also its decision III/7 through which a second amendment to the Convention was adopted,

Noting that article 14, paragraph 4, of the Convention, which establishes the conditions for entry into force of amendments to the Convention other than those to an annex, is open to different interpretations due to the ambiguity inherent in the expression “by at least three fourths of these Parties”,

Recalling that the second amendment to the Convention replaces the above-cited expression with “by at least three fourths of the number of Parties at the time of their adoption”,

Recalling also article 31 of the Vienna Convention on the Law of Treaties, which sets out general rules on the interpretation of treaties and which requires, in paragraph 3 (a), that any subsequent agreement between the parties to a treaty regarding its interpretation or the application of its provisions shall be taken into account,

Desiring to bring about an early entry into force of the amendments adopted through its decisions II/14 and III/7,

1. *Agrees* to interpret the expression “by at least three fourths of these Parties” as meaning at least three fourths of the Parties to the Convention that were Parties at the time of the adoption of the amendment in question;

2. *Decides* that any State that becomes a Party to the Convention after the date of adoption of this decision is also deemed to have agreed to the interpretation of article 14, paragraph 4, of the Convention set out above.

Draft decision V/3

(to be considered by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context at its fifth session)

Review of implementation

The Meeting of the Parties to the Convention,

Recalling its decisions III/1 and IV/1 on the review of implementation,

Recalling also article 14 bis of the Convention, as adopted by its decision III/7, that provides a legal obligation on Parties to report on their implementation of the Convention,

Having analysed the reports provided by Parties in response to the questionnaire for the reporting system,

[*Regretting* that one Party that was a Party to the Convention during the period under reviewed has not responded to the questionnaire,]

1. *Welcomes* the reports by Parties on their implementation, which have been made available on the website of the Convention;

2. *Adopts* the Third Review of Implementation (ECE/MP.EIA/2011/2 and ECE/MP.EIA/2011/3) and requests the secretariat to arrange its publication in an appropriate form;

3. *Notes* the findings of the Third Review of Implementation, including:

(a) Confusion among the Parties about the respective functions of the point of contact for notification and the focal point for administrative matters;

(b) That the list of activities covered by the Convention in appendix I is not being reflected in full by some Parties;

(c) A frequent lack of a definition by Parties of “the public”;

(d) A failure by Parties to recognize that article 3, paragraph 8, and article 4, paragraph 2, state that the “concerned Parties” are responsible for ensuring opportunities for public participation[, and that the opportunities in these provisions are distinct];¹

(e) A failure to recognize that article 5 provides for transboundary consultations distinct from article 4, paragraph 2;

¹ *Note by the secretariat:* The final clause of this sentence has been removed from the corresponding finding of the draft review of implementation.

(f) A lack of experience in carrying out post-project analysis (art. 7);

(g) A continuing need for bilateral and multilateral agreements or other arrangements, particularly to address differences between Parties in: the content of the notification; language; time frames; how to proceed when there is no response to a notification or if there is disagreement about the need for notification; the interpretation of various terms; and the requirement for post-project analysis;

4. *Requests* the secretariat to bring to the attention of the Implementation Committee general and specific compliance issues identified in the Third Review of Implementation, and requests the Implementation Committee to take these into account in its work.
