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on Environmental Impact Assessment
in a Transboundary Context

Implementation Committee

Twenty-fifth session

Geneva, 11–13 September 2012

Report of the Implementation Committee on its twenty-fifth session

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I. Introduction

1. The twenty-fifth session of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment (Protocol on SEA) was held from 11 to 13 September 2012 in Geneva, Switzerland.

A. Attendance

2. The following members of the Implementation Committee for Convention and Protocol matters attended the session: Ms. E. Grigoryan (Armenia); Ms. A. Babayeva, who had been appointed by the Government of Azerbaijan on 31 August 2012 to replace Mr. R. Sattarzada (Azerbaijan); Ms. S. Dimitrova (Bulgaria); Mr. M. Prieur (France); Mr. J. Brun (Norway); Mr. J. Jendroška (Poland); Ms. T. Plesco (Republic of Moldova); Ms. L. Papajová Majeská (Slovakia); Ms. V. Kolar-Planinšič (Slovenia); Mr. F. Tudorie, replacing Mr. F. Zaharia (Romania) for the present session; and Ms. L. A. Hernando (Spain).

3. The Chair of the Committee, Ms. Kolar-Planinšič, welcomed the new member nominated by Azerbaijan. She expressed her concerns about the absences of some of the Committee members and the numerous changes in membership that had taken place since the establishment of the Committee by the Meeting of the Parties in June 2011. She recalled her letters of 31 January 2012 to all Parties represented in the Committee, urging them to honour their responsibilities and stressing “the importance of continuity for the work of the Committee and the obligation of all members to participate in all of its sessions” (rule 4, paragraph 2, of the Committee’s operating rules). The Chair again urged the Committee members to comply with this request.

B. Organizational matters

4. The Chair of the Committee opened the session. The Committee adopted its agenda (ECE/MP.EIA/IC/2012/3).

5. The Committee members nominated by Armenia and Azerbaijan made short statements concerning the submission by Azerbaijan regarding Armenia.

II. Submissions

6. Discussions concerning submissions were not open to observers, according to rule 17, paragraph 1, of the Committee’s operating rules.

A. Armenia

7. Further to its twenty-fourth session, the Committee continued its consideration of the submission by Azerbaijan, received on 5 May 2011, regarding its concerns about Armenia’s compliance with its obligations under the Convention. The Committee reviewed the comments and representations made with regard to its draft findings and the recommendations received from Armenia and Azerbaijan on 14 and 15 August 2012, respectively, and finalized its findings accordingly. As regards the recommendations, the Committee considered that it was necessary for it to seek the advice of the Bureau

regarding its proposal to assist the two Parties with the implementation of the Convention. The Committee invited its Chair to consult the Bureau on its behalf in that regard.

8. Pending the Bureau's response, the Committee decided to finalize its draft recommendations at its twenty-sixth session, to be held from 26 to 28 November 2012 in Geneva. It invited the Chair to write to both Parties to inform them accordingly.

B. Belarus

9. The Committee continued its consideration of the submission by Lithuania, received on 16 June 2011, regarding its concerns about compliance by Belarus with its obligations under the Convention. In addition to the information received by the Committee prior to and during its twenty-fourth session, the Committee considered the written responses provided by Belarus on 15 June 2012 to the Committee's questions; the information received from Belarus on 4 and 27 April and on 31 August 2012; as well as the information from Lithuania dated 9 and 23 August 2012.

10. The Committee then prepared its draft findings and recommendations and agreed to send them to the two Parties. In accordance with paragraph 9 of the structure and functions of the Committee set out in the appendix to decision III/2 (ECE/MP.EIA/6, annex II), the Committee asked its Chair to invite the two Parties to submit to the secretariat, by 9 November 2012 at the latest, their comments or representations, which were to remain confidential at that stage.

11. The Committee agreed to consider any comments or representations at its twenty-sixth session before finalizing its findings and recommendations for consideration by the next session of the Meeting of the Parties to the Convention.

C. Azerbaijan

12. Further to its twenty-fourth session, the Committee considered the submission by Armenia, received on 31 August 2011, expressing concerns about compliance by Azerbaijan with its obligations under the Convention. It reviewed the additional information and clarifications provided by Armenia and Azerbaijan on 15 June 2012 and on 14 August 2012, respectively.

13. The Committee recalled its letters of 25 April 2012 to Armenia and Azerbaijan, inviting the two Parties to its twenty-sixth session where it would continue its consideration of the submission, taking into account the further information to be provided by the Parties, in line with paragraph 9 of the structure and functions of the Committee. The Committee would start by considering the submission in a closed session on 26 November, in the afternoon. On 27 November, in the morning, the Committee would invite presentations by the concerned Parties (not exceeding 20 minutes each) and ask them questions. In the afternoon, the Committee would then consider the submission again in a closed session.

14. The Committee drafted its questions to the two Parties. It asked its Chair to forward the questions to both Parties and invite them to be prepared to answer the questions at the hearing, as well as to provide written replies to the Committee, through the secretariat, by 9 November 2012. The Chair should also remind both Parties to provide the secretariat with confirmation of their participation and the composition of their delegation well in advance of the session. Azerbaijan, as the Party whose compliance was in question, should also be invited to inform the secretariat whether it was willing to accept the presence of observers at the hearing.

III. Committee initiative

15. The Committee considered the report by an international consultant to the secretariat of 31 August 2012 further to the project proposed by the Committee to provide technical assistance to Azerbaijan to assist it to comply fully with the Convention. The report provided an overview of the national legislation, including the new draft law on environmental impact assessment (EIA) in Azerbaijan and recommendations for further strengthening Azerbaijan's capacity to comply fully with its obligations under the Convention. The Committee also noted the comments on the report provided by the representative of Azerbaijan on 3 September 2012, as well as information on how the recommendations would be taken into account by the Government of Azerbaijan.

16. The Committee welcomed the report by the consultant and encouraged Azerbaijan to implement its recommendations. It invited Azerbaijan to report to it at its subsequent sessions about progress in implementing them.

IV. Review of implementation

17. The Committee completed its work on the questionnaire for the review of implementation of the Convention and its Protocol during the period 2010–2012, as requested by 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 on SEA (ECE/MP.EIA/SEA/2, decision I/7–V/7, para. 1). Taking into account the feedback by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment during its first meeting (24–26 April 2012) and the comments from the national focal points, the Committee finalized the strategic environmental assessment (SEA) part of the questionnaire, as provided in the annex to this report.

18. The Committee noted that the Working Group had requested the secretariat to send the EIA questions to the Parties by 30 October 2012 for completion by 31 March 2013 and the SEA questions by 30 December 2012 for completion by 27 May 2013.

V. Information gathering

A. Ukraine

19. Further to its twenty-second and twenty-third sessions, the Committee continued its consideration of the information received regarding EIA for a planned extension of the Rivne nuclear power plant in Ukraine, close to the border with Belarus and Poland. Previously, the Committee had concluded that Ukraine had not applied the Convention in relation to the planned extension of the nuclear power plant. However, it had noted that the main issue was to establish whether the activity in question was a proposed activity subject to the Convention.

20. In that regard, the Committee referred to paragraph 10 (c) of the background note by the secretariat on the application of the Convention to nuclear energy-related activities (ECE/MP.EIA/2011/5), which indicated that major changes might include "an extension of the lifetime of the facility". Following the presentation of the views by each of the Committee members, the Committee reached a consensus that the extension of the life-time of a nuclear power plant, even in absence of any works, was to be considered as a major change to an activity and consequently subject to the provisions of the Convention.

21. For its remaining conclusions and recommendations for further action on the information gathering case on Ukraine, the Committee agreed to continue its deliberations at its next session, based on the analysis to be provided by the curator in advance of the session.

B. Romania

22. Further to its twenty-third session, the Committee considered the information received on a planned activity in Romania, close to the border with Bulgaria. Taking into account the legal analysis by the curator, the Committee decided that it had no grounds to conclude that Romania was in non-compliance with its requirements under the Protocol on SEA. However, the Committee wished to continue gathering information about the assessment of locational alternatives and the extent to which they would be subject to the EIA and SEA procedures in line with the Convention and its Protocol.

23. The Committee asked its Chair to write to the Government of Romania to invite it to provide the above information and to respond to the following additional questions:

(a) What was the decision-making procedure in Romania which determined in practical terms the location for the repository — bearing in mind that in order to be designated such a location had to be, under the specific legal requirements related to nuclear activities, subject to all preparatory monitoring and studies?

(b) Was the decision-making for “partial location authorization” required to consider alternative locations? Could that authorization be granted to several locations? Had it been granted to several locations?

(c) Was it legally possible and practically feasible that when adopting the Zonal Area Plan or environmental agreement (EIA decision) the relevant authorities would be able to designate another site for the repository, if it was not subject to all preparatory monitoring and studies allowed under the “partial location authorisation”?

24. Based on the information to be provided to it by 9 November 2012, the Committee would continue its consideration of the case at its twenty-sixth session.

C. Lithuania

25. The Committee took note of the information provided by a non-governmental organization of Belarus regarding a planned activity in Lithuania, close to the border with Belarus. The Committee agreed to nominate Mr. Prieur as the curator for that matter and decided to continue its consideration of the matter at its next session based on the analysis of the information to be provided by the curator in advance of the session.

D. General guidance to resolve a possible systemic inconsistency between the Convention and the State ecological expertise system

26. The Committee noted the information provided by the secretariat on the plans for the development of general guidance to solve a possible systemic inconsistency between the Convention and environmental assessment under the State ecological expertise system in the countries of the former Soviet Union. The guidance would be developed by two consultants to the secretariat on the basis of the information from the concerned countries and in consultation with the Committee. The guidance would then be presented for consideration by the Working Group on EIA and SEA at its next session (27–30 May 2013).

VI. Other business

27. The Committee agreed that Ms. Babayeva would act as curator for the follow-up to decision V/4 regarding Ukraine and decided to consider the matter at its next session based on the analysis to be provided by the curator in advance of its session.

VII. Presentation of the main decisions taken and closing of the session

28. The Committee adopted the draft report of its session, prepared with the support of the secretariat.

29. The Committee decided that it would next meet from 26 to 28 November 2012. The Chair then closed the twenty-fifth session.

Annex

Questionnaire for the report of [name of country] on the implementation of the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context in the period 2010-2012

Information on the focal point for the Protocol

1. Name and contact information:

Information on the point of contact for the Protocol

2. Name and contact information (if different from above):

Information on the person responsible for preparing the report

3. Country:
4. Surname:
5. Forename:
6. Institution:
7. Postal address:
8. E-mail address:
9. Telephone number:
10. Fax number:
11. Date on which report was completed:

Part one

Current legal and administrative framework for the implementation of the Protocol

In this part, please describe the legal, administrative and other measures taken in your country to implement the provisions of the Protocol. This part should describe the framework for your country's implementation, and not experience in the application of the Protocol.

Article 2 — Definitions

12. Is the definition of plans and programmes for the purpose of the Protocol the same in your legislation as in article 2, paragraph 5? Please specify:
 - (a) Yes;

- (b) Yes, with some differences;
 - (c) No (please provide the definition);
 - (d) There are no definitions of plans and programmes in the legislation;
 - (e) Your comments.
13. Is the definition of “environmental, including health effect” in your legislation the same as in article 2, paragraph 7? Please specify:
- (a) Yes;
 - (b) Yes, with some differences;
 - (c) No (please provide the definition);
 - (d) There is no definition of “environmental, including health effect” in the legislation;
 - (e) Your comments.
14. Is the definition of “the public” according to article 2, paragraph 8, in your legislation the same as in the Protocol? Please specify:
- (a) Yes;
 - (b) Yes, with some differences;
 - (c) No (please provide the definition);
 - (d) There is no definition of the public in the legislation;
 - (e) Your comments.
15. Are there any conditions for non-governmental organizations to be able to take part in the assessment procedure? Please specify:
- (a) Yes (please provide the conditions);
 - (b) No;
 - (c) Your comments.

Article 3 — General provisions

16. Provide legislative, regulatory and other measures you have adopted in your country to implement the Protocol (art. 3, para. 1) (you can choose more than one option):
- (a) Law on SEA (please indicate number/year/name);
 - (b) SEA provisions are transposed into another law(s) (please specify);
 - (c) Regulation (please indicate number/year/name);
 - (d) Administrative (please indicate number/year/name);
 - (e) Other (please specify);
 - (f) Your comments.
17. Indicate the specific legislation in your country, if any, that assures that the requirements of article 3, paragraphs 6 and 7, are met, and that these rights of the public are observed (you can choose more than one option):
- (a) Constitution;

- (b) Law on public participation (please indicate number/year/name);
- (c) Law on SEA;
- (d) Legislation which transposes the Protocol on SEA (please indicate number/year/name);
- (e) Legislation which transposes the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (please indicate number/year/name);
- (f) Other (please specify);
- (g) Your comments.

Article 4 — Field of application

18. List the types of plans and programmes that require SEA in your legislation (art. 4, para. 2).
19. Explain how you define whether a plan or programme “set the framework for future development consent” (art. 4, para. 2).
20. Explain how the terms “plans and programmes . . . which determine the use of small areas at local level” (art. 4, para. 4) are interpreted in your legislation.
21. Explain how you identify in your legislation a “minor modification” to a plan or programme (art. 4, para. 4).

Article 5 — Screening

22. How do you determine which other plans and programmes should be subject to a SEA according to article 4, paragraphs 3 and 4 (art. 5, para. 1)? Please specify:
 - (a) On a case-by-case basis;
 - (b) By specifying types of plans and programmes;
 - (c) By using a combination of (a) and (b);
 - (d) Other (please specify);
 - (e) Your comments.
23. Describe the procedures required in your legislation for consulting the environmental and health authorities (art. 5, para. 2, art. 6, para. 2, and art. 9, para. 1). If different in screening, scoping and on the draft plans and programmes and the environmental report, please specify.
24. Do you provide opportunities for the public concerned to participate in screening and/or scoping of plans and programmes in your legislation (art. 5, para. 3, and art. 6, para. 3)? If yes, please specify (you can choose more than one option):
 - (a) By sending written comments to the competent authority;
 - (b) By sending written comments to the local municipality;
 - (c) By providing answers to a questionnaire;
 - (d) By taking part in a public hearing;

- (e) There are no opportunities for public participation in screening and/or scoping;
- (f) Other (please specify);
- (g) Your comments.

25. At what stage of the procedure for a plan or programme does your legislation require you to make the screening decision publicly available? What information do you provide in the screening decision (art. 5, para. 4)?

Article 6 — Scoping

26. How do you determine what is relevant information to be included in the environmental report in accordance with article 7, paragraph 2 (art. 6, para. 1)? Please specify (you can choose more than one option):

- (a) By using annex IV;
- (b) By using the comments from the concerned authorities;
- (c) By using the comments from the public concerned, if it has been consulted;
- (d) As determined by the competent authority based on its own expertise;
- (e) By using other means (please specify);
- (f) Your comments.

Article 7 — Environmental report

27. How do you determine “reasonable alternatives” in the context of the environmental report (art. 7, para. 2)? Please specify:

- (a) On a case-by-case basis;
- (b) As defined in the national legislation (please specify);
- (c) Your comments.

28. How do you ensure sufficient quality of the reports? Please specify:

- (a) The competent authority checks the information provided and ensures it includes all information required under annex IV as a minimum before making it available for comments;
- (b) By using quality check lists;
- (c) There are no specific procedures or mechanisms;
- (d) Other (please specify);
- (e) Your comments.

Article 8 — Public participation

29. How do you ensure the “timely public availability” of draft plans and programmes and the environmental report (art. 8, para. 2)? Please specify (you can choose more than one option):

- (a) Through public notices;

- (b) Through electronic media;
 - (c) Through other means (please specify);
 - (d) Your comments.
30. How do you identify the public concerned (art. 8, para. 3)? Please specify (you can choose more than one option):
- (a) Based on the geographical location of the plans and programmes;
 - (b) By making the information available to all public and letting them identify themselves as public concerned;
 - (c) By other means (please specify);
 - (d) Your comments.
31. How can the public concerned express its opinion on the draft plans and programmes and the environmental report (art. 8, para. 4)? Please specify (you can choose more than one option):
- (a) By sending comments to the relevant authority/focal point;
 - (b) By providing answers to a questionnaire;
 - (c) Orally;
 - (d) By taking part in a public hearing;
 - (e) Other (please specify);
 - (f) Your comments.
32. Do you have a definition in your legislation of the term “within a reasonable time frame” (art. 8, para. 4)? Please specify:
- (a) Yes (please provide the definition);
 - (b) No, the time frame is given by a number of days for each commenting period;
 - (c) No, it is defined case by case;
 - (d) Other (please specify);
 - (e) Your comments.

Article 10 — Transboundary consultations

33. As a Party of origin, when do you notify the affected Party (art. 10, para. 1)? Please specify:
- (a) During scoping;
 - (b) When the draft plan or programme and the environmental report have been prepared;
 - (c) At other times (please specify);
 - (d) Your comments.
34. As a Party of origin, what information, do you include in the notification (art. 10, para. 2)? Please specify:
- (a) The information required by article 10, paragraph 2;

(b) The information required by article 10, paragraph 2, plus additional information (please specify);

(c) Your comments.

35. As a Party of origin, does your legislation indicate a reasonable time frame for the transmission of comments from the affected Party (art. 10, para. 2)? Please specify:

(a) Yes (please, indicate how long);

(b) No;

(c) Your comments.

36. If the affected Party has indicated that it wishes to enter into consultations, how are the detailed arrangements, including the time frame for consultations, agreed (art. 10, paras. 3 and 4)? Please specify:

(a) Following those of the Party of origin;

(b) Following those of the affected Party;

(c) Other (please specify);

(d) Your comments.

Article 11 — Decision

37. When a plan or programme is adopted, explain how your country ensures that due account is taken of the (art. 11, para. 1):

(a) Conclusions of the environmental report;

(b) Mitigation measures;

(c) Comments received in accordance with article 8, paragraph 10.

38. How and when do you inform your own public and authorities (art. 11, para. 2)?

39. How do you inform the public and authorities of the affected Party (art. 11, para. 2)? Please specify:

(a) By informing the point of contact;

(b) By informing the contact person of the ministry responsible for SEA, who then follows the national procedure and informs his/her own authorities and public;

(c) By informing all the authorities involved in the assessment and letting them inform their own public;

(d) Other (please specify);

(e) Your comments.

Article 12 — Monitoring

40. Describe the legal requirements for monitoring the significant environmental, including health, effects of the implementation of the plans and programmes adopted under article 11 (art. 12, paras. 1 and 2).

Article 13 — Policies and legislation

41. Do you have national legislation on the application of principles and elements of the Protocol as regards policies and legislation (art. 13, paras. 1–3)? Please specify:

- (a) Yes (please specify which articles of the Protocol apply);
- (b) No;
- (c) Your comments.

Part two

Practical application during the period 2010–2012

In this part, please report on your country's practical experiences in applying the Protocol (and not your country's procedures, which were described in part one). The focus of this section should be on identifying good practices as well as difficulties encountered in applying the Protocol in practice. The goal is to enable Parties to share solutions. Please therefore provide appropriate examples highlighting application of the Protocol in your country and innovative approaches to improve its application.

42. Does your country object to the information on SEA procedures provided in this section being compiled and made available on the website of the Protocol? Please specify (indicate “yes” if you object):

- (a) Yes;
- (b) No.

Domestic and transboundary implementation in the period 2010–2012

43. Which competent authority/authorities are responsible for carrying out the SEA procedure in your country? Please specify:

- (a) If they are different for different types of plans and programmes;
- (b) If they are different at different levels (national, regional, local);
- (c) If they are different for domestic and transboundary procedures;
- (d) Please name the responsible authority/authorities.

44. Does your SEA documentation always include a specific (sub)chapter on information on potential transboundary effects? Please specify:

- (a) Yes;
- (b) No, only when potential transboundary effects are identified.

Cases during the period 2010–2012

45. If possible, provide the (approximate) number of domestic and transboundary SEA procedures initiated during the given period and list them by referring to the sectors in article 4, paragraph 2.

Experience with the strategic impact assessment procedure in 2010-2012

46. If your country has had practical experience in implementing the Protocol, has this supported the integration of environmental, including health, concerns into the development of plans and programmes? Have the conclusions included in the environmental report influenced the drafting and resulted in altering of a plan or programme? Please, provide examples, if you have this information.

47. If your country has experienced substantial difficulties interpreting particular terms (or particular articles) in the Protocol, please indicate them. Does your country work together with other Parties to find solutions? If not, how does your country overcome the(se) problem(s)? Please, provide examples, if available.

48. Please share with other Parties your country's experience of applying the Protocol in practice, if such information is available. In response to each of the questions below, either provide one or two practical examples or describe your country's general experience. You might also include examples of lessons learned in order to help others. Please detail:

(a) Your country's experience with domestic procedures:

(i) Has your country carried out monitoring according to article 12 and, if so, for what kinds of plans or programmes?;

(ii) Please provide examples of good practice cases, whether complete cases or good practice elements (e.g., consultation or public participation) within cases. Would your country like to present a case to be published on the website of the Convention and its Protocol as a "case study fact sheet"?

(b) Your country's experience with transboundary procedures:

(i) Translation is not addressed in the Protocol. How has your country addressed the question of translation? What difficulties has your country experienced in relation to translation and interpretation, and what solutions has your country applied?;

(ii) What does your country usually translate as a Party of origin?;

(iii) Has your country carried out transboundary public participation according to article 10, paragraph 4? If so, how? Was your country the Party of origin or the affected Party? What has been your country's experience of the effectiveness of public participation? Has your country experienced difficulties with the participation of its public or the public of another Party? (E.g., have there been complaints from the public about the procedure?);

(iv) Does your country have examples of organizing transboundary SEA procedures for joint cross-border plans and programmes? If yes, describe such examples, if possible;

(v) Please provide examples of good practice cases, whether complete cases or good practice elements (e.g., consultation or public participation) within cases. Would your country like to present a case within a "case study fact sheet" to be published on the website of the Convention and its Protocol?

Cooperation between Parties in 2010–2012

49. Does your country have any successful examples of how it has overcome difficulties arising from different legal systems in neighbouring countries?

Experience regarding guidance in 2010–2012

50. Are you aware of any use in your country of the *Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment* available online?¹ If yes, please describe any experience with using this guidance document and how it might be improved or supplemented.

51. Do you provide any assistance and guidance to the public? If yes, please specify.

52. Do you support associations, organizations or other groups that promote the Protocol? If yes, please specify which and how.

53. Has your country had difficulties implementing the procedure defined in the Protocol?

Awareness of the Protocol

54. Does your country see a need to improve the application of the Protocol in your country and, if so, how does it intend to do so?

Suggested improvements to the report

55. Please provide suggestions for how this report may be improved.

¹ See http://www.unece.org/env/eia/pubs/sea_manual.html.