

Economic Commission for Europe

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

Implementation Committee

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Item 9 of the provisional agenda

Other business

Opinions of the Implementation Committee, 2001-2010

Note by the Implementation Committee

The present report responds to the request by the fourth session of the Meeting of the Parties to the Implementation Committee to promote and support compliance with the Convention, including to provide assistance in this respect (ECE/MP.EIA/10, decision IV/2, para. 1(b)). The Committee believes that reference to the Committee's opinions will assist Parties and other States in the development of legal, administrative and other measures to implement the provisions of the Convention. The Committee requested in its nineteenth session that this document be made available on the website of the Convention.

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I. Introduction

1. The Convention on Environmental Impact Assessment (EIA) in a Transboundary Context was adopted in Espoo (Finland) in 1991 and entered into force in 1997. The Meeting of the Parties to the Convention established an Implementation Committee in 2001 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 (ECE/MP.EIA/4, annex IV, decision II/4).

2. The purpose of this document is to aid Parties to the Convention in their compliance with their obligations, noting that “compliance concerns both legal implementation and practical application” (ECE/MP.EIA/10, decision IV/2 (review of compliance), annex III, para. 24). The document largely comprises direct quotations of the opinions and recommendations of the Implementation Committee in the period from 2001 to 2010 (the Committee’s first 19 sessions), as expressed in the reports of its sessions (see table overleaf), in its report to the fourth session of the Meeting of the Parties and in its findings and recommendations subsequent to either a submission or a Committee initiative.

3. This document does not address the Committee’s structure and functions, and the procedures for the review of compliance (ECE/MP.EIA/6, annex II, decision III/2 (review of compliance), appendix), or the Committee’s operating rules (decision IV/2, annex IV).

A. Core obligations

4. “The Implementation Committee considered that, while it is not in its mandate to develop a hierarchy of the obligations under the Convention, it could identify the following issues as core obligations: establishment of an EIA procedure; notification; confirmation of participation in the procedure under the Convention; transmittal of information; public participation; preparation of EIA documentation; distribution of the EIA documentation for the purpose of participation of authorities and public of the affected country; consultation between Parties; final decision and transmittal of final decision documentation. The Committee was of the opinion that these obligations are an integral part of the whole process in the Convention” (MP.EIA/WG.1/2003/3, para. 9). Consequently, these obligations provide a framework for this document. The obligation to report on implementation has been added to this list, as well as the field of application of the Convention.

B. Decisions of the Meeting of the Parties

5. The Committee considered the obligations of Parties arising directly from decisions of the Meeting of the Parties. “It was mentioned that a decision by the Meeting of the Parties did not constitute a legally binding obligation and thus would not be subject to compliance review” (MP.EIA/WG.1/2003/3, para. 10) (but see chapter XIV on reporting).

¹ Implementation Committee’s findings and recommendations further to a Committee initiative on Armenia.

Committee sessions.

<i>Session number</i>	<i>Dates</i>	<i>Report</i>
1	11–14 June 2001	Informal document
2	10–12 June 2002	MP.EIA/WG.1/2003/3
3	10–11 March 2003	MP.EIA/WG.1/2003/8
4	30–31 October 2003	MP.EIA/WG.1/2004/3
5	18–19 December 2003	MP.EIA/WG.1/2004/4
6	3–5 November 2004	MP.EIA/WG.1/2005/3
7	2–4 March 2005	MP.EIA/WG.1/2005/4
8	14–15 November 2005	ECE/MP.EIA/WG.1/2006/3
9	6–8 February 2006	ECE/MP.EIA/WG.1/2006/4
10	9–10 October 2006	ECE/MP.EIA/WG.1/2007/3
11	13–14 February 2007	ECE/MP.EIA/WG.1/2007/4
12	26–28 June 2007	ECE/MP.EIA/2008/1
13	30 October–1 November 2007	ECE/MP.EIA/2008/2
14	15–17 January 2008	ECE/MP.EIA/2008/3
15	28–30 October 2008	ECE/MP.EIA/IC/2008/2
16	10–12 March 2009	ECE/MP.EIA/IC/2009/2
17	14–18 September 2009	ECE/MP.EIA/IC/2009/4
18	23–25 February 2010	ECE/MP.EIA/IC/2010/2
19	31 August–2 September 2010	ECE/MP.EIA/IC/2010/4

II. Establishment of an environmental impact assessment procedure

6. The Committee has addressed the establishment of an EIA procedure, as provided for in article 2, paragraph 2.

7. When considering the first submission to the Committee, by Romania regarding Ukraine's compliance with the Convention, the Committee concluded: "The provision in the Constitution to directly apply international agreements ... is considered by the Committee as being insufficient for proper implementation of the Convention without more detailed provisions in the legislation. In particular, the national regulatory framework should clearly indicate:

(a) Which of the decisions for approving the activities should be considered the final decision for the purpose of satisfying the requirements of the Convention;

(b) Where in the decision-making process there is a place for a transboundary EIA procedure and who is responsible for carrying it out and by which means” (decision IV/2, annex I, para. 64).

8. The first part of this conclusion was repeated by the Committee when considering its first initiative, on Armenia: “The provision in the Constitution to directly apply international agreements is considered by the Committee as being insufficient for proper implementation of the Convention without more detailed provisions in the legislation” (decision IV/2, annex II, para. 28).

9. “The Committee is of the opinion that procedural differences between EIA and [strategic environmental assessment (SEA)] imply that separate provisions on EIA and SEA are preferable and that the same provisions should not attempt to address both issues” (decision IV/2, annex II, para. 31).

10. “The Committee is also of the opinion that details of the EIA procedure, for example regarding public participation, should rather be included in the legislation than left for implementing regulations” (decision IV/2, annex II, para. 32).

11. “The Committee considered that entrusting the proponent of an activity with the carrying out of the procedure for transboundary environmental impact assessment would not be adequate, unless the proponent was the State” (report of eighteenth session, ECE/MP.EIA/IC/2010/2, para. 36).

12. “A domestic regulatory framework was necessary for implementation of the Convention, especially with respect to public participation” (report of nineteenth session, ECE/MP.EIA/IC/2010/4, para. 19(a)).

III. Field of application

13. The Committee has addressed the field of application of the Convention, as provided for in article 2, paragraphs 3, 5 and 7.

14. The Committee “recognized that the Convention applies to the whole range of environmental impacts, both to neighbouring countries and long range impacts” (MP.EIA/WG.1/2003/3, para. 8).

15. Referring to a navigation channel, which was the subject of the first submission to the Committee, by Romania regarding Ukraine’s compliance with the Convention, “the Committee is of the opinion that for the purpose of the procedures under the Convention, in particular article 2, paragraph 3, such an activity includes not only construction but also operation and maintenance works” (decision IV/2, annex I2, para. 41)

16. “Article 3, paragraph 1, of the Convention stipulates that Parties shall notify any Party of a proposed activity listed in appendix I that is likely to cause a significant adverse transboundary impact. The Committee is of the opinion that, while the Convention’s primary aim, as stipulated in article 2, paragraph 1, is to ‘prevent, reduce and control significant adverse transboundary environmental impact from proposed activities’, even a low likelihood of such an impact should trigger the obligation to notify affected Parties in accordance with article 3. This would be in accordance with the Guidance on the Practical Application of the Espoo Convention, paragraph 28, as endorsed by decision III/4

² Implementation Committee’s findings and recommendations further to a submission by Romania regarding Ukraine.

(ECE/MP.EIA/6, annex IV). This means that notification is necessary unless a significant adverse transboundary impact can be excluded” (decision IV/2, annex I, paras. 54).

17. The Committee reminded “all Parties to the Convention of ... 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” (ECE/MP.EIA/IC/2009/2, para. 30). Further, “the Committee wished to remind Parties that ... modernization of a motorway or express road might often constitute a major change to the motorway or express road.” (ECE/MP.EIA/IC/2009/4, para. 36).

18. Referring to a navigation channel, which was the subject of the second submission to the Committee, by Ukraine regarding Romania’s compliance with the Convention, “the Committee was of the opinion that if the only purpose of the dredging was to maintain a depth of an existing waterway which was duly permitted, such dredging must be considered as maintenance of an already existing activity and therefore did not constitute a major change which could trigger the obligations under the Convention. However, maintenance of a depth in a waterway—if such a depth resulted from an activity that should have been but had not been duly permitted under the Convention—constitutes continuation of such activity and remains subject to the obligations under the Convention” (ECE/MP.EIA/IC/2010/2, annex, para. 40).

A. Inquiry procedure

19. The Committee has addressed in detail the Convention’s inquiry procedure, as provided for in article 2, paragraph 7, and appendix IV, particularly within findings and recommendations further to a submission by Romania regarding Ukraine (decision IV/2, annex I). Certain of the following opinions were expressed within the context of the submission but may have wider relevance.

20. “The final opinion of an inquiry commission 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 and should lead to notification if the opinion is that a significant adverse transboundary impact is likely. The Convention requires notification as early as possible and no later than when informing the public of the Party of origin (art. 3, para. 1). If the public of the Party of origin has already been informed about the proposed activity, the notification should be sent immediately” (decision IV/2, annex I, para. 43).

21. “The Committee is of the opinion that, in the absence of clear legal grounds in the Convention for accepting *ex tunc* [or retroactive] effect, the final opinion of the Inquiry Commission should be understood as having only *ex nunc* [or non-retroactive] effect” (decision IV/2, annex I, para. 51).

22. “The immediate suspension of implementation [as a result of a request for establishment of an inquiry commission] can ... be invoked from the objective and purpose of the Convention. As set out in the preamble and in article 2, paragraph 1, the Convention is based on the principle of prevention, which is well embedded into international environmental law³. Therefore, Ukraine should have taken all appropriate and effective

³ As the International Court of Justice put it, “Existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States ... is now part of the corpus of international law” (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, International Court of Justice Reports 1996, para. 29) and “Vigilance and prevention are required on account of often irreversible character of damage to the environment” (Gabcikovo-

measures to, first of all, prevent a significant adverse transboundary environmental impact from the project. Indispensable to the prevention of such effects occurring in the case of activities likely to have a significant adverse transboundary environmental impact is the carrying out the transboundary procedure under the Convention. Bearing in mind that the final opinion of the Inquiry Committee was that the project is likely to have a significant adverse transboundary impact, the Committee is of the opinion that, by continuing the implementation of the project after the matter had been submitted to the inquiry procedure and without carrying out the transboundary procedure, Ukraine defeated the object and purpose of the inquiry procedure and made it impossible to achieve its obligation to prevent significant adverse transboundary environmental impact from Phase I of the project.” (decision IV/2, annex I, para. 53).

23. “... The Committee is convinced that immediately after the final opinion of the Inquiry Commission was delivered, the transboundary procedure for this project should have been initiated with the sending of the notification according to Article 3, paragraph 2, of the Convention” (decision IV/2, annex I, para. 68).

24. “... The Committee is of the opinion that ... Ukraine should have suspended the project, including its maintenance and operation ..., immediately after Romania requested the establishment of the Inquiry Commission Further, with the final opinion of the Inquiry Commission ..., the project, including its maintenance and operation, should have continued to be suspended pending the completion of the procedures under the Convention” (decision IV/2, annex I, para. 69(b)).

25. “... The Committee finds that not notifying Romania immediately after the final opinion of the Inquiry Commission should be considered as non-compliance with the Convention” (decision IV/2, annex I, para. 69(c)). Further, “the Committee finds that, by failing to timely and sufficiently notify Romania after the final opinion of the Inquiry Commission, Ukraine was not in compliance with its obligations under article 3 of the Convention” (decision IV/2, annex I, para. 70(a)). Therefore, “the Committee recommended that all Parties immediately notify other concerned Parties following a positive conclusion of an inquiry commission” (decision IV/2, annex III4, para. 12).

26. “The Committee wished to make it 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 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” (ECE/MP.EIA/IC/2009/2, para. 22).

27. “The environmental impact assessment procedure, including the preparation of the EIA documentation, must 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” (ECE/MP.EIA/IC/2009/4, para. 14).

Nagymaros Project (Hungary/Slovakia), Judgment, International Court of Justice Reports 1997, para. 140).

⁴ Report on the activities of the Implementation Committee.

IV. Relationship to other international agreements

28. “The Committee noted that article 2, paragraph 10, of the Convention is meant to make it clear that following the obligations related to notifying potentially affected Parties and conducting, if appropriate, other steps of transboundary procedure, does not release the Parties from observing relevant obligations under other international instruments, unless such instruments specifically provide so. Simultaneously, following the obligations stemming from any international instrument can by no means be interpreted as an excuse for not observing the requirements of the Convention related to notifying potentially affected Parties and conducting, if appropriate, other steps of transboundary procedure” (ECE/MP.EIA/IC/2010/2, annex, para. 41).

V. Notification

29. The Committee has addressed notification, as provided for in article 3.

30. “Acknowledging the likelihood of a ‘significant adverse transboundary environmental impact from proposed activities’ for the purpose of triggering the Convention’s procedures should be treated as willingness to cooperate with the Parties concerned to ‘prevent, reduce and control’ such impact before the activity is authorized. Thus, initiation of the transboundary procedure under the Convention does not prevent the Party of origin from undertaking such proposed activities after having carried out the transboundary procedure, provided that due account is taken of the transboundary procedure’s outcome in the final decision (art. 6, para. 1)” (decision IV/2, annex I, para. 55).

31. “It was recognized that the Convention did not include a clear provision to which authority in the affected Party the notification would have to be sent. It was noted that for this reason the first Meeting of Parties established in its decision I/3 the points of contact. It was mentioned that a decision by the Meeting of the Parties did not constitute a legally binding obligation and thus would not be subject to compliance review. However, it was realized that this is relevant for a good functioning of the Convention. The Implementation Committee concluded that a Party would have fulfilled its obligations under the Convention when the notification was sent to the authority nominated for this purpose by the affected Party, which would normally be the point of contact or the Ministry of Foreign Affairs, unless otherwise provided for in a bilateral or multilateral agreement” (MP.EIA/WG.1/2003/3, para. 10).

32. The Committee “recommended that Parties clarify the timing of notification in bilateral and multilateral agreements” (report of ninth session, ECE/MP.EIA/WG.1/2006/4, para. 12).

33. “The Committee recommended that each Party:

(a) Inform the secretariat of any necessary changes to the information on the points of contact presented on the Convention’s website (further to decision I/3);

(b) As a Party of origin, specify a reasonable time frame for a response to a notification (art. 3, para. 2(c)) and, as a matter of good practice, request an acknowledgement of the notification;

(c) As an affected Party, always respond within the deadline specified in a notification (art. 3, para. 3);

(d) As a Party of origin, and as a matter of good practice, take action to confirm that the notification has been received before assuming that the lack of a response indicates that an affected Party does not wish to participate” (ECE/MP.EIA/WG.1/2006/4, para. 13).

34. “The Committee suggested that Parties adopt a precautionary approach, including early consultation with potential affected Parties as to whether notification was necessary, in order to avoid problems when a notification comes at a very late stage in the procedure” (report of tenth session, ECE/MP.EIA/WG.1/2007/3, para. 13).

35. “The Committee examined compliance issues related to the implementation of the Convention’s notification requirements. The Committee recommended that each Party:

(a) Clarify the timing of notification in bilateral and multilateral agreements or directly bilaterally and multilaterally, noting that Parties send the notification at different stages in their EIA procedure and recalling article 3, paragraph 1 (‘as early as possible and no later than when informing its own public about the proposed activity’);

(b) Inform the secretariat of any necessary changes to the information on the points of contact presented on the Convention’s website (further to decision I/3) (ECE/MP.EIA/WG.1/2006/4, para. 13 (a)), so as to ensure notifications are correctly addressed;

(c) As a Party of origin, consult potential affected Parties early as to whether notification was necessary, in order to avoid problems when a notification comes at a very late stage in the procedure (ECE/MP.EIA/WG.1/2007/3, para. 13);

(d) As a Party of origin, send the notification both by post and by electronic means, taking into account the legal limitations on electronic communications in some countries (ECE/MP.EIA/WG.1/2007/4, para. 28);

(e) As a Party of origin, specify a reasonable time frame for a response to a notification (art. 3, para. 2(c)) and, as a matter of good practice, request an acknowledgement of the notification (ECE/MP.EIA/WG.1/2006/4, para. 13 (b));

(f) As an affected Party, always respond within the deadline specified in a notification (art. 3, para. 3) (ECE/MP.EIA/WG.1/2006/4, para. 13 (c));

(g) As a Party of origin, and as a matter of good practice, take action to confirm that the notification has been received before assuming that the lack of a response indicates that an affected Party does not wish to participate (ECE/MP.EIA/WG.1/2006/4, para. 13 (d))” (decision IV/2, annex III, para. 28).

36. “The Committee recommended that ... 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:

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

(b) The timing of, and means for carrying out, consultations under article 5” (ECE/MP.EIA/IC/2009/2, para. 24).

37. “The Committee recommended that Parties should notify as early possible and at the scoping stage, where applicable, so that the environmental impact assessment documentation could meet the needs of the affected Party” (ECE/MP.EIA/IC/2010/2, para. 20).

38. “...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” (ECE/MP.EIA/IC/2010/2, para. 21).

39. “The Committee emphasized that the Government of the Party of origin was responsible for ensuring that notification under article 3 was carried out properly. The recipient of a notification in the affected Party was the point of contact in accordance with decision I/3 (ECE/MP.EIA/2, annex III), unless otherwise provided for in a bilateral or multilateral agreement or other arrangement” (ECE/MP.EIA/IC/2010/2, para. 38).

40. “...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, for example simultaneously by post and e-mail” (ECE/MP.EIA/IC/2010/2, para. 43).

41. “If, on the one hand, the Party of origin sends a notification to the point of contact in the affected Party and can prove that it did so and, on the other hand, the affected Party did not initially receive the notification, there is no need for the Party of origin to send again the notification provided that:

(a) The Party of origin accepts the participation of the affected Party in the transboundary EIA procedure;

(b) The affected Party receives all information provided for in article 3, paragraphs 2 and 5, as well as the environmental impact assessment documentation” (ECE/MP.EIA/IC/2010/2, para. 27).

42. “The affected Party could not impose conditions on the notification beyond those provided in the Convention unless provided in a bilateral agreement or other arrangement between the concerned Parties” (ECE/MP.EIA/IC/2010/4, para. 28).

43. “A bilateral agreement could be an effective mechanism to address communication between concerned Parties and the sending of information” (ECE/MP.EIA/IC/2010/4, para. 29).

44. “If a Party of origin was uncertain of the means of communication with an affected Party, it should send information both by post and through diplomatic channels, and use e mail or any other appropriate communication to verify receipt” (ECE/MP.EIA/IC/2010/4, para. 30).

45. “If a Party failed to provide correct and up-to-date contact details of its point of contact and focal point to the secretariat and, as appropriate, the Party of origin, in an ongoing procedure, the Party of origin in ongoing and new procedures could not be held responsible for a failure to provide information to that Party in accordance with the Convention. Changes to the point of contact or the focal point should be communicated immediately” (ECE/MP.EIA/IC/2010/4, para. 31).

VI. Preparation of the environmental impact assessment documentation

46. The Committee has addressed the preparation of the EIA documentation, as provided for in article 4, paragraph 1.

47. “The Committee recommended that:

(a) ...;

(b) Concerned Parties maximize direct contact between them to resolve timing problems, for example, by verifying that the documentation had been received (e.g. by requesting acknowledgement);

(c) Parties, as a Party of origin, make early contact with the affected Party regarding the content of the documentation might help avoid serious difficulties later in the transboundary EIA procedure, including the provision of effective public participation and reasonable time frames. Consultation might also be used to resolve perceived problems with the EIA documentation;

(d) Parties ensure that the EIA documentation meets the requirements of appendix II to the Convention and, as a matter of good practice, is of sufficient quality (ECE/MP.EIA/WG.1/2006/4, para. 18). The documentation should properly address issues that the affected Party identifies in response to the notification, if they are reasonable and based on appendix II” (decision IV/2, annex III, para. 29).

48. The Committee considered that “the non-technical summary should outline in non-technical language the findings included in each of the earlier chapters corresponding to items (a)–(h) of appendix II” (report of sixteenth session, ECE/MP.EIA/IC/2009/2, para. 16).

49. The Committee recalled “that the Convention’s provision requiring that the EIA documentation included a description, where appropriate, of reasonable alternatives (appendix II, item (b)) was mandatory for the legal implementation of the Convention by a Party” (ECE/MP.EIA/IC/2009/2, para. 39).

50. “The Committee recommended that the Party of origin involve the affected Party in any case-by-case determination of the content of the EIA documentation (‘scoping’)” (ECE/MP.EIA/IC/2009/4, para. 26).

51. “It was important that the no-action alternative should be addressed fully so that the evolution of the environment in the absence of the project could be considered” (ECE/MP.EIA/IC/2010/2, para. 33).

52. “The standards of the Party of origin relating to the content of the environmental impact assessment documentation were normally applicable, as long as they complied with international legislation applicable in the concerned Parties” (ECE/MP.EIA/IC/2010/2, para. 34).

53. “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 a language the public could understand, as set out in article 2, paragraph 6; article 3, paragraph 8; and article 4, paragraph 2 of the Convention. That access must be based on at least partial translation of documentation, when documentation was in a language that could not be understood by the public of the affected Party. Unless otherwise provided for in a bilateral or multilateral agreement or other arrangement, the concerned Parties should, when sending or responding to the notification, agree at the start of the procedure for transboundary environmental impact assessment on the scope of documentation to be translated. The documentation to be translated should, as a minimum, include the non-technical summary and those parts of the environmental impact assessment documentation that were necessary to provide an opportunity to the public of the affected Party to participate that was equivalent to that provided to the public of the Party of origin. The Committee recommended that environmental impact assessment documentation should include a separate chapter on transboundary impact to facilitate translation. Unless otherwise provided for in a bilateral or multilateral agreement or other arrangement, the burden for translation should fall upon the Party of origin in line with the polluter pays

principle. The Committee noted that the duration of the procedure was dependent upon the timely provision of the environmental impact assessment documentation translated as necessary” (ECE/MP.EIA/IC/2010/2, para. 35).

54. “The Committee considered that entrusting the proponent of an activity with the carrying out of the procedure for transboundary environmental impact assessment would not be adequate, unless the proponent was the State” (ECE/MP.EIA/IC/2010/2, para. 36).

55. “... That was in addition to their responsibility to provide the possibility of access to the full and final environmental impact assessment 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 environmental impact assessment documentation” (ECE/MP.EIA/IC/2010/4, para. 20).

VII. Transfer and distribution of documentation

56. The Committee has addressed the transfer and distribution of the EIA documentation, as provided for in article 4, paragraph 2.

57. “The Committee recommended that this provision be addressed in bilateral and multilateral agreements, and agreed that interpretative guidance might be required” (decision IV/2, annex III, para. 30, and report of the eighth session, ECE/MP.EIA/WG.1/2006/3, para. 11).

VIII. Public participation

58. The Committee has addressed public participation, as provided for in article 2, paragraph 6, article 3, paragraph 8, and article 4, paragraph 2.

59. The Committee “noted that public participation is an integral part of transboundary EIA” (ECE/MP.EIA/WG.1/2006/4, para. 16). “The Committee therefore urged Parties to clarify responsibilities regarding public participation case by case and in bilateral and multilateral agreements, taking into account the guidance on public participation in transboundary EIA (decision III/8, appendix, particularly section 2.5)” (decision IV/2, annex III, para. 31).

60. “The Committee reiterated the common responsibility of all concerned Parties to ensure that the opportunity provided to the public of the affected Party to participate in the procedure under the Convention was equivalent to that provided to the public of the Party of origin. The affected Party had an obligation to allow such an opportunity. If the affected Party refused to carry out its duties, the Party of origin could not be held responsible for organizing public participation in the affected Party, but should 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).

61. “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” (ECE/MP.EIA/IC/2010/4, para. 19(b)).

62. “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 environmental impact assessment" (ECE/MP.EIA/IC/2010/4, para. 19(c)).

63. "Bilateral agreements could resolve many issues relating to public participation, as foreseen by the Convention" (ECE/MP.EIA/IC/2010/4, para. 19(f)).

64. "...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 environmental impact assessment 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" (ECE/MP.EIA/IC/2010/4, para. 20).

IX. Consultations

65. The Committee has addressed consultations on the basis of the EIA documentation, as provided for in article 5.

66. "The Committee discussed possible non-compliance issues related to consultation (art. 5), emphasizing the need to clarify practical arrangements case by case and in bilateral and multilateral agreements" (decision IV/2, annex III, para. 32, and ECE/MP.EIA/WG.1/2006/4, para. 17).

67. "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 ... 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)" (ECE/MP.EIA/IC/2009/2, para. 24).

68. "The Committee underlined that article 5 provides for specific consultations after completion of the EIA documentation" (ECE/MP.EIA/IC/2009/2, para. 25).

69. "The Committee reminded Parties that consultations under article 5 were bilateral or multilateral discussions between authorities that had been authorized by the concerned Parties, and should not be confused with public participation under article 3, paragraph 8, and article 4, paragraph 2, or with consultation of the authorities under article 4, paragraph 2, in the areas likely to be affected" (ECE/MP.EIA/IC/2010/2, para. 39).

X. Final decision

70. The Committee has addressed the final decision, as provided for in article 6.

71. "The Committee is of the opinion that, while the Parties are free to decide which of the multitude of decisions required within their regulatory framework should be considered final for the purpose of the Convention, their discretion in this respect is limited to those

decisions that in real terms set the environmental conditions for implementing the activity” (ECE/MP.EIA/10, decision IV/2, annex I, para. 61).

72. “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” (ECE/MP.EIA/IC/2009/2, para. 21).

73. “The Committee endorsed ... 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 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” (ECE/MP.EIA/IC/2009/2, para. 26).

74. “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” (ECE/MP.EIA/IC/2009/2, para. 27).

75. “The Committee wished to remind Parties that ... an extended time period between a final decision and works might bring into doubt the validity of the EIA and thus the final decision” (ECE/MP.EIA/IC/2009/4, para. 36). Similarly, “the Committee ... 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” (ECE/MP.EIA/IC/2009/4, para. 46).

76. “...the Committee recommended that Parties include monitoring conditions in their final decisions when applying the Convention” (ECE/MP.EIA/IC/2010/2, para. 18).

77. “The final decision should provide a summary of the comments received pursuant to article 3, paragraph 8, and article 4, paragraph 2, and the outcome of the consultations as referred to in article 5, and should describe how they and the outcome of the environmental impact assessment had been incorporated or otherwise addressed in the final decision, in the light of the reasonable alternatives described in the environmental impact assessment” (ECE/MP.EIA/IC/2010/2, para. 40).

XI. Post-project analysis

78. The Committee has yet to address post-project analysis, as provided for in article 7.

XII. Bilateral and multilateral cooperation

79. The Committee has addressed bilateral and multilateral cooperation, as provided for in article 8.

80. “While recognizing the merits of bilateral and multilateral agreements, the Committee also recommended that Parties should consider developing informal agreements, such as bilateral guidelines, common declarations and memorandums of understanding, in cases where bilateral agreements were inappropriate.” (ECE/MP.EIA/IC/2010/2, para. 18)

XIII. Research programme

81. The Committee has addressed research programmes, as provided for in article 9.
82. The Committee “noted the obligation on Parties to exchange the results of research programmes listed in Article 9 and encouraged Parties to comply with this obligation” (report of fifth session, MP.EIA/WG.1/2004/4, para. 10).
83. “Parties should fulfil the above-mentioned obligation through, among other means, national reporting when completing the questionnaire on their implementation of the Convention” (ECE/MP.EIA/IC/2010/2, para. 19).

XIV. Reporting

84. The Committee first considered the question of whether there is a legal obligation to report in its second session: “As there is no legal obligation to report, the Committee considered that it cannot review compliance with reporting” (MP.EIA/WG.1/2003/3, para. 6).
85. However, the Meeting of the Parties later adopted an amendment that will provide an obligation to report within the Convention and this led to a change the Committee’s position in its sixth session: “The second amendment to the Convention, adopted at the third meeting of the Parties, provides in article 14 *bis* an obligation to report. The Meeting of the Parties shall decide on the frequency of regular reporting required by the Parties and the information to be included in those regular reports (art. 14 *bis*, para. 1). Though the amendment was not yet in force, the Committee considered that the Meeting of the Parties had expressed a strong wish for Parties to report. Therefore, the failure to submit reports, or inadequate reporting, might be considered as a compliance matter in the future” (MP.EIA/WG.1/2005/3, para. 8).
86. The Meeting of the Parties subsequently decided “that Parties shall complete the questionnaire as a report on their implementation of the Convention, taking note of the obligation to report arising from article 14 *bis* as adopted by decision III/7, and that a failure to report on implementation might be a compliance matter to be considered by the Implementation Committee” (decision IV/1 (review of implementation), para. 8).
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