Economic Commission for Europe

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

Working Group on Environmental Impact Assessment

Fourteenth meeting
Geneva, 24–26 November 2010
Item 8 of the provisional agenda
Preparations for the fifth session of
the Meeting of the Parties to the Convention

General compliance issues

Note by the secretariat

This document was prepared by the secretariat as requested by the Working Group on Environmental Impact Assessment at its thirteenth meeting (ECE/MP.EIA/WG.1/2010/2, para. 58). The document presents extracts from the reports of sessions of the Implementation Committee addressing general compliance issues identified in the second review of implementation (ECE/MP.EIA/11) and in national reports (completed questionnaires) on Parties' implementation of the Convention in the period 2003–2005.

Notification

(Source: ECE/MP.EIA/IC/2010/2)

20. … 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.

21. … 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.

Public participation

(Source: ECE/MP.EIA/IC/2010/4)

19. … 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

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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 environmental impact assessment;

(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 Espoo and Aarhus Conventions, respectively, 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 to do so, 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.

20. 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 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. 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.

Article 4: Preparation of the environmental impact assessment documentation

(Source: ECE/MP.EIA/IC/2009/4)

26. Ms. Kalygulova … observed that the problems noted by the Committee previously (decision IV/2, annex III, para. 29) had continued, in particular regarding the adequacy of the content of the EIA documentation in terms of whether the information met the needs of the affected Party and whether it was in accordance with the Convention. 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").

Article 5: Consultations on the basis of the environmental impact assessment documentation

(Source: ECE/MP.EIA/IC/2009/2)

24. Ms. Stoyanova … observed that the questions regarding article 5 had not been understood by all Parties. The responses did not differentiate between consultations at the beginning of the procedure, during the procedure and once the EIA documentation had been prepared. As a result, some responses identified problems, for instance the language of the documentation, the need for translation, and difficulties with the time frame, all of which should have been resolved before the consultations under article 5 took place. The observations led her to question the quality and effectiveness of consultations, which depended on the completeness of the EIA documentation. To avoid these difficulties and to provide a clear understanding of consultations under article 5, 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).

25. 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. ...

Article 6: Final decision

(Source: ECE/MP.EIA/IC/2009/2)

26. Mr. Sauer … indicated that article 6 generally appeared to be implemented without difficulty. The Committee endorsed Mr. Sauer’s 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.

27. 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. The Committee agreed to come back to this issue at a later session.

Article 7: Post-project analysis

(Source: ECE/MP.EIA/IC/2010/2)

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

Article 8: Bilateral and multilateral cooperation

(Source: ECE/MP.EIA/IC/2010/2)

18. … 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.

Article 9: Research programmes

(Source: ECE/MP.EIA/IC/2010/2)

19. 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. Parties should fulfil the above-mentioned obligation through, among other means, national reporting when completing the questionnaire on their implementation of the Convention.

Cases

(Source: ECE/MP.EIA/IC/2009/4)

27. Ms. Kolar-Planinsic … noted that most Parties reported between one and four cases, and that almost twice as many cases were reported where the Party was Party of origin as where it was the affected Party. Transboundary EIA procedures generally lasted 12 months or more. She also observed that some difficulties had occurred with communications between Parties and because of poor quality documentation, a lack of post-project analysis and a lack of interest from the public in large transboundary projects. Language problems arose in some cases where documentation was sent in the language of the Party of origin with no translation into the language of affected Party; the affected Party then had to provide for a translation of the documentation, which was costly and time-consuming. … The Committee decided that the reportedly limited use of the guidance on public participation (ECE/MP.EIA/7) should be brought to the attention of the Working Group.