

Economic Commission for Europe

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

Meeting of the Parties to the Convention
on Environmental Impact Assessment in
a Transboundary Context serving as the
Meeting of the Parties to the Protocol on
Strategic Environmental Assessment

Working Group on Environmental Impact Assessment and Strategic Environmental Assessment

Sixth meeting

Geneva, 7–10 November 2016

Item 10 of the provisional agenda

Preparations for the next sessions of the Meetings of the Parties

Draft overview of pros and cons of extending the interval between the sessions of the Meetings of the Parties

Note by the Bureau

I. Introduction

1. At its fifth meeting (11–15 April 2016), the Working Group Environmental Impact Assessment and Strategic Environmental Assessment agreed on a proposal by the European Union and its member States to invite the secretariat and the Bureau to prepare an overview of the pros and cons of extending the interval between the sessions of the Meetings of the Parties to the Convention and the Protocol from three to four years, taking also into account the outcomes of the related discussions held under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention). This overview was requested to inform the discussions on this topic at the Working Group's sixth meeting (7–10 November 2016).
2. The present document is prepared by the secretariat in consultation with the Bureau to meet the request of the Working Group. It aims to outline some considerations that could be of relevance to the Working Group when considering whether to propose to the Meeting of the Parties to the Convention and the Protocol to extend the interval between its sessions. It will be to the Working Group to assess the pros and cons of its proposals. Ultimately, it is the prerogative of the Parties alone to decide to meet as they deem necessary.

II. Provisions and decisions regarding the timing of the Meetings of the Parties

3. The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) requires that “the Parties shall keep under continuous review the implementation of this Convention” (see article 11, para. 2). In a similar way, the Protocol on Strategic Environmental Assessment (Protocol on SEA) requires that the Parties “shall keep under regular review the implementation of this Protocol” (see article 14, para. 2). However, neither the Convention nor the Protocol specifies the interval between the sessions of the Meetings of the Parties to the Convention and the Protocol:
 - (a) The Convention (as adopted on 29 February 1991) stipulates in its article 11,

paragraph 1, that “the first meeting of the Parties shall be convened not later than one year after the entry into force of this Convention. Thereafter, meetings of the Parties shall be held at such other times as may be deemed necessary by a meeting of the Parties, or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat, it is supported by at least one third of the Parties;

(b) According to article 14, paragraph 1, of the Protocol (as adopted in 21 May 2003), “The Meeting of the Parties to the Convention shall serve as the Meeting of the Parties to this Protocol. The first meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol shall be convened not later than one year after the date of entry into force of this Protocol, and in conjunction with a meeting of the Parties to the Convention, if a meeting of the latter is scheduled within that period. Subsequent meetings of the Parties to the Convention serving as the Meeting of the Parties to this Protocol shall be held in conjunction with meetings of the Parties to the Convention, unless otherwise decided by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol”.

4. The Convention required that Parties, when they first meet, should consider and by consensus adopt rules of procedure for their meetings (article 11, para. (d)). The Protocol, in turn, specifies that “the rules of procedure of the Meeting of the Parties to the Convention shall be applied *mutatis mutandis* under this Protocol, except as may otherwise be decided by consensus by the Meeting of the Parties serving as the Meeting of the Parties to this Protocol” (article 14, para. 5). The rules of procedure adopted at the first session of the Meeting of the Parties (Oslo, 18–20 May, 1998) do not set a specific interval for the Parties to meet. The rules concerning “the dates of meetings” state that “At each meeting, the Parties, taking into account article 11, paragraph 1, of the Convention, shall set the indicative date for the opening and the duration of their next meeting” (rule 4) and that “the secretariat shall notify all Parties of the date and the venue of a meeting at least two months before its due to take place (rule 5).

5. In practice, since 2001, the interval between the sessions of the Meetings of the Parties to the Convention (MOP) has been three years, with the exception of that between the third and the fourth sessions, which was four years. The Parties also held in 2003 an extraordinary session in between the second and the third sessions, during the “Environment for Europe” Ministerial Conference in Kyiv, to adopt the Protocol. Since the entry into force of the Protocol in 2010, starting from 2011, the sessions of the Meetings of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (Meeting of the Parties to the Protocol or MOP/MOP) have been held in conjunction with the sessions of the Meetings of the Parties to the Convention, at similar intervals. The sessions of the Meetings of the Parties, in a reverse chronological order, include the following:

- (a) The forthcoming seventh MOP session and third MOP/MOP session, Minsk, 13–16 June 2017;
- (b) Sixth MOP session and second MOP/MOP session, Geneva, 2–5 June 2014;
- (c) Fifth MOP session and first MOP/MOP session, Geneva, 20–23 June 2011;
- (d) Fourth session, Bucharest, 19–21 May 2008;
- (e) Third session, Cavtat (Croatia), 1–4 June 2004;
- (f) Extraordinary session, Kyiv, 21 May 2003;
- (g) Second session, Sofia, 26–27 February 2001;
- (h) First session, Oslo, 18–20 March 1998.

6. As a rule, the Meetings of the Parties have agreed at the end of their sessions to meet again in three years’ time, but leaving the exact dates to be specified at a later stage. It has then been to the Working Group on EIA and SEA, established in 2011, and before that to its predecessor, the Working Group on EIA, to decide on the specific session dates based on proposals by the Bureau. The Bureau has proposed dates after consultation by the secretariat of the host Government, if any, and in taking due account of the timing of the relevant UN and EU meetings, main public holidays, as well as deadlines for the preparation of official documents within the UN.

III. Related developments under the Aarhus Convention and the other ECE Multilateral Environmental Agreements

A. Aarhus Convention

7. At its twentieth meeting, the Working Group of the Parties under the Aarhus Convention considered draft elements of the work programme for 2018–2021 prepared by the Bureau (ECE/MP.PP/WG.1/2016/7). The draft work programme and accompanying information were prepared on the basis of the information notes submitted by the Chairs of the task forces, of the Compliance Committee and of the thematic session on promoting the principles of the Convention in international forums. It also took into account the proposal by the European Union and its member States to extend the intersessional period to four years, and to include a thematic discussion on different substantive issues at each meeting of the Working Group of the Parties.

8. The draft work programme's para. 5 specified that "Thanks to the diverse working structure under the Convention (i.e., three task forces on the three Convention pillars; the Compliance Committee with meetings taking place every three months; ongoing advisory support from the secretariat; and cooperation with numerous partners), it is expected that the prolongation of the intersessional period, combined with annual thematic policy discussions and a thorough review of the progress achieved in implementing the work area on compliance by the Working Group of the Parties, will not impact negatively on the work under the Convention. On the contrary, the extension of the intersessional period would allow both more time for the substantive preparation of meetings and increase the capacity of Parties to participate in the different meetings. On average, one meeting of a subsidiary body or capacity-building activity for the Convention will still take place every month".

9. The discussion under the Aarhus Convention has covered and linked the prolongation of the intersessional period and the frequency of the meetings of the Convention's three Task Forces (on Access to Information; on Public Participation in Decision-making; and on Access to Justice)

10. As an outcome of the discussions, the (unedited advance copy of the) the Working Group's report states that, "there was a general support to extend the intersessional period to four years". As a next step, at its twenty-first meeting (4–6 April 2017), the Working Group of Parties will finalize all draft decisions for the Meeting of the Parties to the Aarhus Convention to be held in Budva (Becici), Montenegro, from 10 to 15 September 2017.

B. Other ECE Multilateral Environmental Agreements

11. Although the Working Group on EIA and SEA requested information only on the related discussions under the Aarhus Convention, the Bureau considered it useful to also review whether the extension of the intersessional period had been discussed under the other United Nations Economic Commission for Europe (ECE) Multilateral Environmental Agreements. The outcome of the consultations with the respective treaty secretariats is as follows:

(a) **Convention on Long-range Transboundary Air Pollution:** The highest decision-making body under the Convention and its Protocols, the Executive Body, holds annual meetings. There has been no discussion this far to change this frequency;

(b) **Convention on the Protection and Use of Transboundary Watercourses and International Lakes and its Protocol on Water and Health:** The intersessional period under both the Water Convention and the Protocol on Water and Health is three years. There has not been any discussion about extending or reducing these periods;

(c) **Convention on the Transboundary Effects of Industrial Accidents:** Although the Industrial Accident's Convention foresees annual meetings, the practice by Parties has always been to hold biennial meetings. At its next meeting, (ninth meeting; Ljubljana, 28–30 November 2016), the Conference of the Parties is expected to adopt an amendment that includes changing the treaty provision to biennial meetings.

IV. Possible considerations (pros/cons)

A. Capacity to prepare and attend meetings

12. The prolongation of the intersessional period from three to four years has the potential to increase Parties' time and capacity to prepare and attend the sessions Meetings of the Parties. Nevertheless, as was done under the Aarhus Convention, the Working Group may also wish to discuss in parallel the frequency of the meetings of the other treaty bodies under the Espoo Convention and its Protocol and assess any potential implications of the prolongation in this regard. For example, it could consider whether the Working Group would need to meet four times during the extended intersessional period, to fulfil its mandate to assist in the implementation of the Convention and the Protocol and the management of their joint workplan. This far the Working Group has met three times in a three year intersessional period, holding two meetings in the year preceding the sessions of the Meetings of the Parties, and none during the year of the MoP sessions.

B. Costs

13. Hosting of the MoP sessions requires resources, both human and financial, from a Host Government. Extending the interval between the sessions of the Meetings of the Parties to four years would somewhat alleviate the financial and organizational burden of host Governments. In principle, extending the interval could also cut down the travel related costs of the delegates. However, if the Working Group was to hold an additional meeting during that extended interval, the savings in the travel costs would be limited. Many of the delegates that attend the meetings of the Working Group and the sessions of the Meetings of the Parties are the same, although the size of the delegations in the latter is often larger, and to a certain extent also more high-level. On the other hand, as the duration of the Working Group's sessions have also resource implications, the delegations may wish to reflect how to most cost-effectively carry out their work. The Implementation Committee has recently discussed how to improve the efficiency of its own working methods in view of its growing workload. It has considered the possible need to increase the number of its annual sessions and also holding on-line meetings in English in between its sessions.

C. Role of the Bureau

14. The delegations may also wish to consider whether the prolongation of the intersessional period would necessitate any changes in the role or mandate of the Bureau, e.g. for it to be entrusted to take certain decisions and oversee actions in between the sessions of the Meetings of the Parties, to avoid delays. Potential changes in the frequency of the Bureau meetings could also be considered, whether it should continue to hold one meeting per year (i.e. four in a four year period), or whether these meetings should be increased, or decreased. Holding of on-line meetings in English only could also be considered.

D. Review of compliance

15. In accordance with the operating rules of the Implementation Committee (decision IV/2 annex IV, ECE/MP.EIA/10); as amended by decision V/4 (ECE/MP.EIA/15) and decision VI/2 (ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1) if further to a its consideration of a Government to Government submission or a Committee Initiative, the Committee provisionally finds that a Party whose compliance is in question is not in compliance, it should consider and agree upon possible recommendations to the Meetings of the Parties (rule 12 para.2). A longer interval between the sessions of the Meetings of the Parties may postpone the adoption of the findings and recommendations regarding a compliance matter and in case of non-compliance, delay the necessary measures to be taken to bring about compliance. It should be noted, however, that rule 14 allows the Committee the possibility to initiate action in between the sessions of the Meetings of the Parties:“ Pending consideration by the Meetings of the Parties, with a view to addressing compliance issues without a delay, the Committee might: (a) Provide advice and facilitate assistance to a Party whose compliance is in question regarding its implementation of the Convention, in consultation with that Party; (b) Make recommendations to that Party whose compliance is in question, subject to agreement with that Party.

E. Reporting and review of implementation

16. Parties to the Convention have reported on their implementation of the Convention since 2003, on average every three years. Parties to the Protocol have also reported on their implementation of the Protocol every three years, since 2010. The national reports, submitted in the form of responses to a questionnaire, are made publicly available on the Convention website. The national reports are summarized in reviews of implementation that are agreed by the Working Group and adopted by the Meetings of the Parties at their sessions. The reviews of implementation are also one source of information for the review of compliance by the Implementation Committee: it has considered numerous specific compliance issues arising from the reviews of implementation¹. The Protocol or the second amendment to the Convention (adopted through decision III/7, not yet in force) do not specify the frequency of the reporting, but the latter specifies that the review of compliance “shall be based on, but not limited to, regular reporting by the Parties. 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”. The Working Group and the Implementation Committee may discuss whether and how a possible prolongation of the reporting interval would impact the review of implementation and the review of compliance carried out under the Convention and the Protocol.

F. Development and implementation of the workplans

17. When developing and adopting workplans for a prolonged period (of four years), Parties may expect there to be additional needs for adjustment as it can be more difficult to foresee activities at a longer term with priorities that may shift and new needs that may emerge in between. The Working Group and the Meeting of the Parties has this far monitored the rate of implementation of the workplan activities, but this may become less relevant if many of the originally planned activities are cancelled or changed during the period at the request of the countries. In practice, as long as it has been possible to match a request for assistance with donor support and to identify sufficient resources in the secretariat, the secretariat has attempted to meet the needs of the Governments, although these were not initially foreseen in the workplan. The secretariat has reported on them as additional activities carried out during the intersessional period. The Working Group may consider whether it wishes to clarify how to address new requests and changes that arise during the period. For the donors and lead countries and organizations could also be more difficult to predict the availability of funding for four years. If the intersessional period is prolonged, Parties should ensure that this would not further decrease the sustainability and predictability of the funding for the two treaties.

18. The present system is as follows: Parties agreed in 2014 that activities for which no funding or lead countries can be identified should not be included in the workplan upon its adoption but should be included on a separate waiting list until appropriated funding and lead countries are made available (see decision VI/3-II/3). The financial strategy also adopted by Parties in 2014 in addition specifies that the funding of the “wait-listed” activities should, however, be subject to reassessment by the Bureau based on possibly changed priorities, unless the donor contribution was earmarked for a specific activity on the waiting list (see annex II to decision VI/4-II/4, para. 5 (d))

G. Sustainability and predictability of funding

19. The secretariat relies for its functioning on voluntary contributions to the Convention Trust Fund that cover as a minimum the staff costs of one external expert (extrabudgetary professional staff member to serve amongst others as the Secretary to the Implementation Committee) and of a half time administrative support staff. When adopting budgets and pledging funds at the Meetings of the Parties, the donor Governments and organizations should therefore be able to ensure that their contributions will cover the entire intersessional period, independently of its duration. It is also necessary for the Parties to ensure that the contributions will be provided in a timely manner (i.e. to the extent possible, contributions for a given calendar year should be made by the end of the preceding) to allow the timely renewal of contracts that alone ensures the continuity of the employment of the staff.

H. Terms of service of officers

20. Parties nominate officers for serving in the Bureau and the Working Group for one term, i.e.

¹ See: http://www.unece.org/env/eia/implementation/implementation_committee_letters.html

the duration of one intersessional period, while members of the Implementation Committee and their alternates are elected for two terms. The officers are to remain in office until their successors are elected by the subsequent Meeting of the Parties. It is possible that some Parties would find it more challenging to commit the necessary human and financial resources for an extended period of time. It would also be necessary to ensure the continuity of service of the officers to avoid disruptive changes. At present, a Party that has nominated an officer who due to exceptional circumstances cannot complete his/her term of service, has had to designate a suitable replacement. Parties may wish to consider establishing rules to address a situation where a Party would not be able or willing to designate a replacement, as this would create a gap that would negatively impact the functioning in particular of the Implementation Committee
