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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

Tenth meeting
Geneva, 21–23 May 2007
Item 4 (a) of the provisional agenda

**ACTIVITIES RELATING TO THE CONVENTION LISTED IN THE WORKPLAN
(DECISION III/9)**

Compliance with and implementation of the Convention

Report of the eleventh meeting of the Implementation Committee

Note by the secretariat

Summary

The Meeting of the Parties established the Implementation Committee 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 (decision II/4). The present report gives an account of the eleventh meeting of the Implementation Committee, held in Skopje on 13-14 February 2007, further to (a) the structure and functions of the Implementation Committee and procedures for review of compliance (decision III/2) and (b) the adopted workplan (decision III/9).

I. INTRODUCTION

1. Representatives from the following Parties members of the Implementation Committee attended the meeting: Armenia (Ms. Margarita Korkhmazyan), Croatia (Mr. Nenad Mikulic), Finland (Ms. Seija Rantakallio), Germany (Mr. Matthias Sauer), Poland (Mr. Jerzy Jendroska), Slovakia (Mr. Tomáš Černošous) and The former Yugoslav Republic of Macedonia (Ms. Menka Spirovska, replaced by Ms. Daniela Stefkova in the early part of the meeting). The representative of Kyrgyzstan was unable to attend.

2. Ms. Rantakallio, Chair, opened the meeting. Ms. Stefkova, and later Ms. Spirovska, welcomed the Committee to Skopje. The Committee adopted its agenda as prepared by the secretariat.

3. The Chair noted that a letter had been sent to Poland and a response received confirming the participation of Mr. Jendroska in this and future meetings of the Committee. The Committee welcomed Mr. Jendroska's continued participation.

II. REVIEW OF THE COMPLIANCE REPORTING SYSTEM

A. Compliance reporting system

4. The secretariat reported that it had received 36 completed revised questionnaires to report on the implementation of the Convention in the period to 2005, of which 33 were from the 40 States Parties to the Convention. The completed questionnaires had been placed on the Convention's website at www.unece.org/env/eia/review2006.htm. The secretariat identified Albania, Greece, Ireland, Luxembourg and Portugal as the five countries that had not completed either the first or second questionnaires, for the periods to 2003 and to 2005, respectively. Belgium had only not completed the second questionnaire. The secretariat noted that the Convention had entered into force in Belarus, the fortieth State Party, after the end of the period being reported upon, so no report on implementation had been expected from that country.

5. The secretariat presented a draft second review of implementation, based on Parties' reports provided in response to the second questionnaire. The Committee made a number of suggestions, including that the draft be circulated for consultation simultaneously to its members and to all focal points under the Convention, inviting editorial advice from the former and factual corrections from the latter.

6. The secretariat presented the draft of a letter that it proposed be sent by the Committee to those Parties that had not completed the revised questionnaire. The Committee suggested that the letter be amended to require that an explanation be provided as to why the revised questionnaire had not been completed by the Party and to indicate that the Committee might look into the Party's compliance with the Convention. The Committee had already agreed that it might consider approaching Parties that do not respond to questionnaires to enquire how they were implementing the Convention (para. 9 of ECE/MP.EIA/WG.1/2007/3), and that failure to submit reports, or inadequate reporting, might be considered as a compliance matter in the future (para. 10 of ECE/MP.EIA/WG.1/2007/3). The Committee requested its Chair to send the letter, amended as suggested.

7. The Committee also decided that its report to the Meeting of the Parties identify the above-mentioned Parties, even if they subsequently submitted completed revised questionnaires. To facilitate reporting, the Committee also suggested that in future the Working Group on Environmental Impact Assessment (EIA) agree a detailed timetable not only for the submission of completed questionnaires, but also for the generation of the subsequent draft review of implementation.

B. Specific compliance issues

8. The Committee continued its consideration of specific compliance issues identified through the examination of the previous review of implementation. At the Chair's request, Mr. Jendroska provided an overview of issues connected with implementation of multilateral environmental agreements, with a focus on the Convention.

9. The Chair had written to Moldova on behalf of the Committee (para. 20 of ECE/MP.EIA/WG.1/2007/3). The Committee agreed that the correspondence between it and Moldova be placed on the Convention's website once agreed by Moldova.

10. The Committee considered a letter dated 18 October 2006 received from Armenia in response to the Chair's letter of 8 February 2006 (para. 21 of ECE/MP.EIA/WG.1/2007/3). The Committee noted that Armenia had not made a submission regarding its own compliance, but was seeking the assistance of the Committee in implementing the Convention. Ms. Korkhmazyan provided to the Committee the current law on environmental expertise and the draft revised law, both in English, and noted that she had furnished the Committee with necessary information about the matter on behalf of Armenia. Mr. Jendroska, who had been requested by the Chair to examine the current and draft legislation of Armenia in view of its compliance with the Convention, provided remarks in this respect. The Committee noted the assistance-oriented nature of the compliance procedures. The Committee expected, in light of Armenia's letter, that Armenia would welcome possible recommendations by the Committee on measures to strengthen Armenia's capacity to implement the Convention.

11. Ms. Korkhmazyan was present throughout the above discussion, but was not present while the Committee discussed how to proceed. The Committee decided, while making reference to paragraph 6 of the description of the Committee's structure and functions set out in the appendix to decision III/2, to respond positively to the request from Armenia. It asked the Chair to respond on its behalf, stating that the Committee had decided to explore possibilities to provide technical advice to review the Armenian current and draft legislation on EIA in more detail, with reference to paragraph 7 and subject to paragraph 11 of the Committee's structure and functions. The Committee appreciated that Armenia had provided full responses to the Committee's previous correspondence and had submitted completed questionnaire for the periods to 2003 and to 2005. The Committee recognized that the draft Law on Environmental Review was a huge step forward towards establishing a proper legal and administrative framework for EIA in Armenia.

12. Regarding the adequacy of the draft law the Committee expressed some concerns, which it asked be included in the letter. The Committee noted that the implementing regulations for the

draft law would be of fundamental importance in establishing a proper procedure for transboundary EIA in accordance with the Convention. The Committee agreed to continue its dialogue with Armenia with a view to making appropriate recommendations, pursuant to paragraph 11 of the Committee's structure and functions, to strengthen Armenia's legislation.

13. The Committee decided that the Chair make practical arrangements for the proposed technical advice, with the support of the secretariat. In particular, the possibility to contact a consultant, subject to the identification of funds, should be examined. In addition, the Committee invited Armenia to provide any additional information of possible relevance within three months.

III. STRUCTURE AND FUNCTIONS OF THE IMPLEMENTATION COMMITTEE WHEN CONSIDERING MATTERS UNDER THE PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT

14. The Committee reviewed a revised draft decision on procedural and institutional matters, prepared by a small group comprising Germany, the Netherlands and the United Kingdom. The Committee was grateful to the small group for the revised draft and gave its support in principle, as the latest draft took into consideration the Committee's principal concerns about earlier drafts. Nonetheless, the Committee made suggestions on the revised draft and requested Mr. Sauer, who is also a member of the small group, to communicate these suggestions back to the other members of the small group.

IV. OPERATING RULES

15. Mr. Sauer presented revised draft operating rules and the secretariat described a number of suggested further amendments. The Committee discussed these suggestions and agreed a further revised draft, to be circulated by the secretariat and later to be submitted to the Working Group on EIA.

V. OTHER WORKPLAN ACTIVITIES

A. Experience in public involvement

16. The Committee reviewed its discussion at its third meeting (part II of MP.EIA/WG.1/2003/8) on possible public involvement and examined material provided by the secretariat to the Aarhus Convention, also taking note of experience of public involvement under other multilateral environmental agreements. The Committee agreed to return to this matter at a later meeting. The Committee agreed not to propose amendments to its structure and functions in the light of its current experience in public involvement. However, it wished to continue keeping this matter under review in the light of future experience.

B. Encouraging self-referral

17. The Committee considered that, by changing paragraph 5(b) of the description of its structure and functions, the Meeting of the Parties might be able to encourage Parties to make submissions regarding their own compliance with their obligations under the Convention. There should be a clear inducement to Parties to make such submissions. It would therefore wish to

come back to this matter in the light of any experience with the activity on country-specific performance reviews that it had proposed be included in the draft decision on the adoption of the workplan.

C. Report to the Meeting of the Parties on the Committee's activities

18. The meeting reviewed the draft report to the Meeting of the Parties and agreed that all members further review the draft and send comments to the secretariat by 30 March 2007. The four members nominated previously (para. 26 of ECE/MP.EIA/WG.1/2007/3) would then prepare a revised draft report for the next meeting of the Committee.

D. Preparation of draft decisions for the Meeting of the Parties

19. **The Chair presented a revised draft decision on the review of compliance, further to decision III/2. The Committee made a number of amendments and asked that the Chair present the further revised draft, included in the annex to this report, to the Working Group on EIA.**

20. **The Committee also asked the Chair to propose to the Working Group the strengthening of the draft decision on the review of implementation, which provides for reporting by Parties on their implementation of the Convention.**

VI. INQUIRY PROCEDURE

21. The Committee recalled the conclusion of the inquiry procedure, initiated at the request of Romania in August 2004, and the opinion of the inquiry commission established under that procedure. The opinion had been submitted to Romania and Ukraine and to the Executive Secretary of the UNECE on 10 July 2006.¹ The commission's unanimous opinion had been that the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian Sector of the Danube Delta (the 'Bystroe Canal Project') would have a significant adverse transboundary impact.

22. The Chair reported that a letter had been sent to Ukraine on 18 December 2006 (para. 31 of ECE/MP.EIA/WG.1/2007/3) and that a response had been received on 22 December 2006. The Committee took note of the response and of further steps being taken by the secretariat in this regard.

VII. SUBMISSION BY ROMANIA

23. The secretariat reported that no letter had been sent to Romania (para. 32 of ECE/MP.EIA/WG.1/2007/3), with Romania having made a new submission to the Committee in the mean time. The Committee took note of the new submission by Romania, received on 23 January 2007, regarding its concerns about Ukraine's compliance with its obligations under the Convention. The secretariat had sent a copy of the submission to the focal point of Ukraine,

¹ The inquiry commission's final report is available at <http://www.unece.org/env/eia/inquiry.htm>.

requesting a reply and any information in support thereof by 23 April 2007, in accordance with paragraph 5(a) of the Committee's structure and functions. The Committee agreed that this was a new submission, superseding Romania's submission of 26 May 2004, which was considered closed. The Committee decided to dedicate its next meeting (Geneva, 26-28 June 2007) to the consideration of the new submission, provided the Parties did not agree a longer period for the reply and information in support thereof from Ukraine, and prepared an outline programme for that meeting.

24. The secretariat informed the Committee that, in accordance with paragraph 9 of the Committee's structure and functions, it would be inviting both Romania and Ukraine to participate in, or be present during, the Committee's consideration of the submission.

25. The Committee agreed that the Chair and Mr. Jendroska further plan the consideration of the submission. The Committee agreed that the secretariat place on the Convention's website an indication that a submission had been made by Romania regarding Ukraine.

VIII. OTHER BUSINESS

26. The secretariat made proposals on how the Committee might have a role in advising Parties to the Convention on how they could ensure compliance with the Convention if they were also party to another agreement that contained provisions related to transboundary EIA. The Committee agreed that if a contradiction were to be identified between provisions in the Convention and provisions in other agreements to which a Party to the Convention is also a Party, then it might consider it as a compliance matter provided that such a contradiction can be construed as a compliance issue under the Convention.

27. The Committee took note of a Judgement of the European Court of Justice (Case C-459/03, European Commission v. Ireland) with regard to its possible implications for multilateral environmental agreements.

28. Mr. Sauer informed the Committee about a workshop on global and regional multilateral environmental agreements that had been organized by the German Presidency of the European Union on 11-12 January 2007 in Potsdam (Germany). Mr. Sauer also informed the Committee of a recent experience with transboundary EIA where a postal notification was not delivered because of a postal strike, but an electronic notification was successful and was accepted by the affected Party. He recommended that notifications be sent both by post and by electronic means. Committee members noted differences between States as to whether electronic communications were legally equivalent, or if additional measures were necessary such as an electronic signature.

29. The Committee expressed its thanks to the Government of The former Yugoslav Republic of Macedonia for hosting the meeting.

30. The Committee decided to meet next in Geneva on 26-28 June 2007 and again on 23-24 October 2007.

31. The Chair closed the meeting on Wednesday, 14 February 2007.

Annex

**DRAFT DECISION ON THE REVIEW OF COMPLIANCE
FOURTH MEETING OF THE PARTIES**

The Meeting,

Recalling Article 11, paragraph 2, of the Convention and decision III/2 on the review of compliance,

Recalling Article 14 bis of the second amendment to the Convention,

Determined to promote and improve compliance with the Convention,

Having considered the analysis made by the Implementation Committee on general compliance issues in the Review of Implementation 2003, as summarized in the Appendix to decision III/1,

[*Having also considered* the recommendations made by the Implementation Committee on a submission made to the Committee in accordance with paragraph 5(a) in the Appendix to decision III/2,]¹

Having reviewed the structure and functions of the Implementation Committee, as described in the Appendix to decision III/2 bearing in mind the possible involvement of the public, and being aware of the consequences for the composition of the Implementation Committee resulting from the entry into force of the Protocol on Strategic Environmental Assessment,

Recognizing the importance of rigorous reporting by Parties of their compliance with the Convention, and noting the second review of the implementation of the Convention in the Appendix to decision IV/1 based on Parties answers to the revised and simplified questionnaire on the implementation of the Convention,

Recalling that the compliance procedure is assistance-oriented and that Parties may make submissions to the Committee on issues regarding their compliance with the Convention,

1. *Adopts* the Implementation Committee's report on its activities set out in Appendix 1 to this decision, welcomes the reports of the meetings of the Committee in the period after the third meeting of the Parties, and requests the Committee:

(a) to keep the implementation and application of the Convention under review, and

¹ The inclusion of this paragraph depends on whether the Committee elaborates such recommendations further to paragraph 11 of the description of its structure and functions appended to decision III/2.

(b) to promote and support compliance with the Convention, including to provide assistance in this respect, as necessary;

2. *Encourages* Parties to bring issues concerning their own compliance before the Committee;

3. *Requests* the Committee to provide assistance to Parties in need of such assistance, as appropriate and to the extent possible [, and in this respect refers to decision IV/6 on the workplan];²

4. *Urges* Parties to take into account in their further work the recommendations for further improving the implementation of and compliance with the Convention, based on but not limited to the analysis on general compliance issues from the Review of Implementation 2003 as requested by the Meeting in its decision III/1, and as presented in section [XX] of Appendix 1 to this decision;

5. *Adopts* the operating rules of the Implementation Committee set out in Appendix 2 to this decision including sources and criteria for dealing with information other than submissions from Parties, which should be applied to any meeting and to any other conduct of business of the Implementation Committee and should be read together with and in furtherance of the structure, functions and procedures described in the Appendix to decision III/2;

6. *Decides* to keep under review and develop if necessary the structure and functions of the Committee as well as the operating rules at the fifth meeting of the Parties in the light of experience gained by the Committee in the interim, and in this context requests the Implementation Committee to prepare any necessary proposals for the fifth meeting of the Parties;

[7. *Adopts* the recommendations of the Implementation Committee concerning the submission... as appended to this decision.]¹

² The inclusion of the text in square brackets depends on the adoption of the corresponding workplan element.