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MEETING OF THE PARTIES TO THE CONVENTION
ON ENVIRONMENTAL IMPACT ASSESSMENT
IN A TRANSBOUNDARY CONTEXT

Fourth meeting
Bucharest, 19–21 May 2008
Item 8(a) of the provisional agenda

REVIEW OF THE WORK DONE BY THE WORKING GROUP ON ENVIRONMENTAL
IMPACT ASSESSMENT AND ADOPTION OF DECISIONS

REVIEW OF IMPLEMENTATION OF THE CONVENTION

Draft decision IV/1 on review of implementation

Draft decision proposed by the Working Group on Environmental Impact Assessment

The following draft decision, which was discussed and endorsed by the Working Group on Environmental Impact Assessment at its eleventh meeting (Geneva, 21–23 November 2007), is recommended for adoption by the Meeting of the Parties at its fourth meeting.

The Meeting of the Parties,

Recalling its decision III/1 on the review of implementation,

Recalling also Article 14 bis of the Convention, as adopted by its decision III/7, that provides a legal obligation on Parties to report on their implementation of the Convention,

Having analyzed the reports provided by the Parties and non-Parties in response to the questionnaire for the reporting system,

Regretting that not all Parties had responded to the questionnaire,

1. *Welcomes* the reports by the Parties and non-Parties on their implementation, which have been made available on the website of the Convention;

2. *Adopts* the Second Review of Implementation, as annexed to this decision;

3. *Notes* the findings of the Second Review of Implementation:

(a) Not all respondents to the questionnaire recognized that Article 3, paragraph 8, and Article 4, paragraph 2, state that the “concerned Parties” (as defined in Article 1, item (iv), to mean both the Party of origin and the affected Party) are responsible for ensuring opportunities for public participation;

(b) Not all respondents recognized that Article 5 provides for transboundary consultations distinct from Article 4, paragraph 2;

(c) Some Parties appeared to apply the Convention routinely. Others, with similar levels of development activity and similar possibilities to affect other Parties, appeared to be more reluctant to embark on transboundary consultations and so limited their experience in the application of the Convention;

(d) Few Parties had had experience of carrying out post-project analysis under Article 7;

(e) There was a continuing need for Parties to establish bilateral and multilateral agreements to identify direct contacts and to address differences in, inter alia, language, the payment of processing fees, the time frames and deadlines, how to proceed when there is no response to a notification, the procedural steps, the timing of public participation (e.g. whether in screening or scoping), the interpretation of various terms (including “major change to an activity”, “significant” impact, “reasonably obtainable information” and “reasonable alternatives”), the content of the environmental impact assessment (EIA) documentation and the requirement for post-project analysis;

4. *Requests* the secretariat to bring to the attention of the Implementation Committee general and specific compliance issues identified in the Second Review of Implementation, and requests the Implementation Committee to take these into account in its work;

5. *Also requests* the Implementation Committee to modify the current questionnaire to provide a questionnaire on the implementation of the Convention in the period 2006–2009, for consideration by the Working Group on Environmental Impact Assessment and for circulation, and for conversion into a parallel Internet-based questionnaire by the secretariat thereafter;

6. *Further requests* the Implementation Committee to include in the questionnaire a question on the application by the Parties of Article 3, paragraph 8, and Article 4, paragraph 2, of the Convention;

7. *Also further requests* the secretariat to put the project lists included in the answers to the questionnaire on the Convention's website unless the responding Party does not agree;

8. *Decides* 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;

9. *Also decides* that a draft third review of implementation based on the reports by Parties will be presented at the fifth meeting of the Parties, and that the workplan shall reflect the elements required to prepare the draft third review.

Annex

Second Review of Implementation

I. INTRODUCTION

1. This document presents the “Review of Implementation 2006”, examining responses to a questionnaire on countries’ implementation of the UNECE Convention on Environmental Impact Assessment (EIA) in a Transboundary Context, for the period mid-2003 to end-2005.
2. The secretariat has made available these responses on the Convention’s website,¹ as decided by the Convention’s Working Group on EIA (MP.EIA/WG.1/2005/2, para. 12).
3. This document introduces the Convention, provides a description of the mandate and aim of the Review, reports the level of response to the questionnaire, and introduces some of the strengths and weaknesses of the implementation of the Convention that are apparent from the responses. The findings of the review are listed in the draft decision to which this document is annexed.
4. This document is a follow-up to the first review, the “Review of Implementation 2003”, as summarized in the appendix to decision III/1 of the Meeting of the Parties to the Convention (ECE/MP.EIA/6, annex I). The full “Review of Implementation 2003” is also available on the Convention’s website.

II. THE CONVENTION

5. The Convention on EIA in a Transboundary Context (the “Espoo Convention”) was adopted and signed on 25 February 1991, in Espoo, Finland. As of 1 January 2007, there were 41 Parties to the Convention: 40 member States of UNECE plus the European Community (EC), defined as “a regional economic integration organization” in the Convention.
6. Two subsidiary bodies support the activities of the Meeting of the Parties to the Convention in the intersessional period: the Working Group on EIA and the Implementation Committee.
7. On 21 May 2003, the Convention was supplemented by the Protocol on Strategic Environmental Assessment (SEA).

¹ <http://www.unece.org/env/eia/>

III. MANDATE AND AIM OF THE REVIEW

8. The Meeting of the Parties decided at its third meeting, held from 1 to 4 June 2004, to adopt a workplan (decision III/9, in ECE/MP.EIA/6, annex IX) that included an activity on “Compliance with and implementation of the Convention”. The objective of the activity was to “Enhance the implementation of and compliance with the Convention”. The activity included the preparation of a revised and simplified questionnaire by the Implementation Committee with the support of the secretariat. The need to revise and simplify the questionnaire had been identified by respondents to the questionnaire used as the basis for the “Review of Implementation 2003”.

9. The activity also included: (a) the distribution of the questionnaire to the Parties for them to complete and return; and (b) preparation of a draft review of implementation. These two sub-activities were to be carried out by the secretariat.

10. The workplan indicated that the secretariat should issue the questionnaire early in 2006 for completion by mid 2006. The Working Group agreed that this schedule would be accelerated to allow adequate time for preparation of the draft review of implementation, with the questionnaire being circulated in October 2005 for completion by the end of April 2006 (MP.EIA/WG.1/2005/2, para. 12).

11. The workplan also indicated that the secretariat should prepare the draft review of implementation for presentation to the Working Group on EIA at the end of 2006 and to the fourth meeting of the Parties in 2007. However, at its ninth meeting, in April 2006, the Working Group decided to postpone its tenth meeting until spring 2007 and the fourth meeting of the Parties to 2008 (ECE/MP.EIA/WG.1/2006/2, para. 33).

IV. LEVEL OF RESPONSE TO THE QUESTIONNAIRE

12. The secretariat issued the questionnaire on 19 and 20 October 2005 accordingly, including countries' responses to the previous questionnaire where appropriate, as requested by the Working Group on EIA (MP.EIA/WG.1/2005/2, para. 12). Reminders were issued on 1 June, 2 August and 13 October 2006, with a final deadline being imposed by the secretariat, with the support of the Implementation Committee, of 30 November 2006.

13. By 28 February 2007, completed questionnaires were received from 33 of the 40 States Parties to the Convention: Armenia; Austria; Azerbaijan; Bulgaria; Canada; Croatia; Cyprus; the Czech Republic; Denmark; Estonia; Finland; France; Germany; Hungary; Italy; Kazakhstan; Kyrgyzstan; Latvia; Liechtenstein; Lithuania; Moldova; the Netherlands; Norway; Poland; Romania; Slovakia; Slovenia; Spain; Sweden; Switzerland; The former Yugoslav Republic of Macedonia; Ukraine and the United Kingdom of Great Britain and Northern Ireland.

14. The Convention entered into force in Belarus after the reporting period. The remaining six States that are Parties to the Convention (Albania, Belgium, Greece, Ireland, Luxembourg and Portugal) failed to provide completed questionnaires by the end of February 2007. Albania, Greece, Ireland, Luxembourg and Portugal also failed to provide completed questionnaires used as the basis for the earlier “Review of Implementation 2003”. However, in May 2007, Belgium,

Luxembourg and Portugal provided completed questionnaires; Greece provided a completed questionnaire in July 2007. These late responses have not been included in the summary of reports. No completed questionnaires were received from Albania and Ireland.

15. The European Community (EC) is a Party to the Convention but, being a regional economic integration organization rather than a State, has a different status and therefore felt it inappropriate to send in a completed questionnaire. Nonetheless, the EC provided a response explaining its position and why it considered itself unable to complete the questionnaire.

16. Two States not party to the Convention provided responses: Georgia and Turkmenistan.

17. Most completed questionnaires were in English, but 11 were not: France responded in French, as did Luxembourg and Switzerland in part, whereas Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan and Ukraine replied in Russian. Informally translated and edited responses from these latter eight States are included on the Convention's website.

V. RESPONSES TO THE QUESTIONNAIRE

18. Responses to the questionnaire were summarized in:

- (a) A review of the legal and administrative framework for implementation of Articles 2 and 3 (ECE/MP.EIA/2008/13);
- (b) A review of the legal and administrative framework for implementation of Articles 4 to 9 (ECE/MP.EIA/2008/14);
- (c) A review of the practical application of the Convention during the period 2003–2005 (ECE/MP.EIA/2008/15).

19. In addition, countries responded to questions on:

- (a) Their plans to ratify the Convention's Protocol and the amendments to the Convention;
- (b) Suggested improvements to the questionnaire.

Their responses to these questions are summarized below. The questions are indicated in italics.

A. Ratification of the amendments and the Protocol

Question 41. If your country has not yet ratified the first amendment to the Convention, does it have plans to ratify this amendment? If so, when?

20. Many countries planned to ratify the first amendment (Armenia, Azerbaijan, Austria², Bulgaria³, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, the Netherlands, Norway, Romania, Slovenia, Slovakia, Switzerland, and the United Kingdom). Cyprus was awaiting a decision on ratification by the European Union (EU). Italy, Liechtenstein, The former Yugoslav Republic of Macedonia and the EC had no plans for ratification at that time. Germany, Poland and Sweden had already ratified the amendment.

Question 42. If your country has not yet ratified the second amendment to the Convention, does it have plans to ratify this amendment? If so, when?

21. Many countries planned to ratify the second amendment (Austria⁴, Azerbaijan, Bulgaria⁵, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, the Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Switzerland and the United Kingdom). Again, Cyprus was awaiting a decision on ratification by the EU. Italy, Liechtenstein and the EC had no plans for ratification at that time. Germany's ratification act had entered into force and its instrument of ratification was to be deposited soon. Sweden had already ratified the amendment

Question 43. If your country has not yet ratified the Protocol on SEA, does it have plans to ratify the Protocol? If so, when?

22. Many countries planned to ratify the Protocol (Armenia, Austria, Azerbaijan, Bulgaria⁶, Croatia, Denmark, Estonia, France, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, the Netherlands, Norway⁷, Poland, Romania, Slovakia, Slovenia, Switzerland and the United Kingdom). Again, Cyprus was awaiting a decision on ratification by the EU. Hungary, Italy, Liechtenstein and the EC had no plans for ratification at that time and Ukraine was not yet ready. Germany's ratification act had entered into force and that its instrument of ratification was to be deposited soon. The Czech Republic, Finland and Sweden had already ratified the Protocol.

² Ratified 14 September 2006.

³ Ratified 25 January 2007.

⁴ Ratified 14 September 2006.

⁵ Ratified 25 January 2007.

⁶ Ratified 25 January 2007.

⁷ Approved 11 October 2007.

B. Suggested improvements to the report

Question 56. Please provide suggestions for how the report may be improved.

23. Some respondents provided suggestions on how to improve the questionnaire:

(a) A shorter questionnaire with fewer questions (Bulgaria, Cyprus, France, Germany, Kazakhstan and Switzerland), and no subdivision of questions (Latvia);

(b) A simplified questionnaire (Bulgaria and France), with duplication, repetition or overlap removed (Bulgaria, Cyprus, Finland, Kazakhstan, Latvia, Lithuania and Moldova);

(c) Simpler questions, with yes/no or multiple-choice answers (Germany and the United Kingdom);

(d) Less theoretical, with more examples (Switzerland);

(e) Removal of questions of definitions of terms (Moldova);

(f) More relevant and focused questions (France and Italy);

(g) A longer reporting period, as transboundary EIA procedures are long and legislation changes infrequently (Hungary);

(h) Access to software tools (spelling- and grammar-checking) (Germany and the United Kingdom) and not using the forms feature (grey boxes where text may be entered) of Microsoft Word (Germany).

VI. FINDINGS OF THE REVIEW

24. An analysis of the information provided in the responses to the questionnaire revealed the increasing application of the Convention and the continuing development of bilateral and multilateral agreements to support its implementation. However, the analysis also revealed a number of possible weaknesses or shortcomings in the Convention's implementation. These weaknesses point to potential and necessary improvements in the implementation of the Convention. To guide and focus the future work under the Convention, they are listed and summarized in the draft decision to which this document is annexed.

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