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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(b) of the provisional agenda

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

REVIEW OF COMPLIANCE WITH THE CONVENTION

**Findings and recommendations further to a Committee initiative on Armenia
(EIA/IC/CI/1)**

Report by the Implementation Committee

Summary

These findings and recommendations were prepared by the Convention's Implementation Committee on 17 January 2008 further to decision III/1 on the review of implementation (ECE/MP.EIA/6, annex I) and to decision III/2 on the review of compliance made by the Meeting of the Parties (ECE/MP.EIA/6, annex II). At its eleventh meeting (13–14 February 2007), the Implementation Committee decided to support the strengthening of Armenia's capacities to comply with its obligations under the Convention. The Committee made a number of recommendations to the Meeting of the Parties further to this initiative.

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I. INTRODUCTION – THE COMMITTEE’S PROCEDURE

1. Decision III/1 on the review of implementation was based on national responses to a questionnaire on Parties’ implementation of the Convention. The Implementation Committee considered compliance issues identified through the examination of the review of implementation appended to decision III/1, including issues concerning the legal implementation of the Convention in Armenia.

2. As a result of this examination the Committee entered into correspondence with Armenia to clarify its responses to the questionnaire. This correspondence culminated in a letter from Armenia dated 18 October 2006 (ECE/MP.EIA/WG.1/2007/4, para. 10). The Committee noted that Armenia, in its letter, had not made a submission regarding its own compliance, but was seeking the assistance of the Committee in implementing the Convention. At its eleventh meeting (13–14 February 2007), the Committee decided, while making reference to paragraph 6 of the appendix to decision III/2, to respond positively to the request from Armenia and to explore possibilities to provide technical advice to review the Armenian current and draft future legislation on Environmental Impact Assessment (EIA) in more detail, with reference to paragraph 7 and subject to paragraph 11 of the appendix to decision III/2.

3. With the assistance of the Organization for Security and Cooperation in Europe, and through the Environment and Security Initiative, such technical advice was provided by a consultant in September 2007.

4. At its thirteenth meeting (30 October–1 November 2007), the Committee considered a report by the consultant, which formed the main basis for the Committee’s deliberations.

5. The Committee drafted findings and recommendations and sent them to the Government of Armenia further to paragraph 9 of the appendix to decision III/2. At its fourteenth meeting (15–17 January 2008), the Committee finalized its findings and recommendations taking into account representations received from Armenia.

6. The Committee welcomes the cooperative spirit with which the Government of Armenia worked with the Committee in its deliberations on the matter, and hopes that this will encourage similar approaches by other Parties to strengthen their compliance with the provisions of the Convention.

II. SUMMARY OF FACTS, INFORMATION AND ISSUES

A. Introduction

7. The legal and administrative framework for EIA in Armenia had existed since 1995 and included the main procedural elements of EIA.

8. Armenia acceded to the Convention on 21 February 1997.

9. A new draft Law on State Environmental Review (SER) had been proposed to improve the legal and administrative framework for EIA in Armenia. The draft Law would establish a new legal framework for both EIA and Strategic Environmental Assessment (SEA) processes.

10. With regard to the transboundary EIA procedure, both the current Law and the draft Law refer mostly to applicable international instruments. The draft Law also envisages, for every proposed activity likely to have a significant adverse transboundary impact, an ad hoc procedure to be established in accordance with Armenia's international agreements.

B. Review of existing legislation

11. The process of SER as well as that of EIA¹ in Armenia is regulated primarily by the Law on Environmental Impact Expertise, adopted in 1995. This Law regulates the legal, economic and organizational basis for expertise (or review) of the environmental impact of proposed activities and concepts. The main goal of the Law is to regulate proposed activities that are likely to have an environmental impact.

12. According to the Law on Environmental Impact Expertise, the expertise process consists of several stages. The proponent develops and submits preliminary documentation on the proposed activity to the Ministry of Nature Protection for review. The Ministry takes a decision about the necessity of carrying out the environmental impact expertise. If an expertise is necessary, the proponent prepares the EIA documentation and submits the required documentation to the Ministry for the expertise.

13. During the examination of documentation for a proposed activity, the State non-commercial organization "Environmental Expertise" collects opinions of interested state bodies

¹ The anglicized Russian acronym for EIA is OVOS.

(e.g. the Ministries of Urban Development, Health, Agriculture, Transport, Economic Development and Trade and the municipalities) and departments of the Ministry of Nature Protection, and solicits professional conclusions from certified experts in order to make a professional decision. “Environmental Expertise” is subordinate to the Minister of Nature Protection; it organizes environmental impact expertise activities and prepares draft expertise conclusions. On the basis of received documentation, the draft conclusion is prepared and presented to the Ministry of Nature Protection for discussion. It is then transferred to the Minister for approval.

14. The Law provides for public participation within different stages of the procedure.
15. The Law foresees adoption of a number of implementing regulations, some of which have not been adopted including a procedure on public hearings.
16. The Law, in its Article 5, paragraph 1, implies a definition of impact by requiring prediction, description and assessment of possible direct and indirect impacts of a planned activity on:
 - (a) Climate conditions, flora and fauna, individual elements of ecosystems, their interrelations and stability, specially protected natural areas, landscapes, geomorphological structures, air, surface and ground waters, and soil;
 - (b) The health and well-being of the population;
 - (c) The environment of settlements;
 - (d) Use of natural resources;
 - (e) Historical and cultural monuments.

Transboundary issues

17. Article 14 of the Law, entitled “Expertise of activities having transboundary impacts”, stipulates that the drafting of expertise conclusions by the authorized body, regarding a proposed activity with environmental impacts outside the borders of Armenia, shall be guided by the requirements of international treaties adopted by Armenia and that the expertise conclusions shall be approved by the Government of Armenia.
18. According to Article 6 of the Constitution of Armenia, international treaties ratified by Armenia are integral parts of the national legal system, and have supremacy over national laws.
19. The Law on Environmental Impact Expertise has one more reference to provisions on transboundary EIA regarding the deadline for issuing the Environmental Impact Expertise conclusion. Article 11, paragraph 2, allows extension of the deadline for issuing of the conclusion if this is required according to Article 14.

C. Draft Law

20. The draft Law on SER would establish a new legal and administrative framework for EIA and SEA in Armenia and, after its adoption, is intended to replace the Law on Environmental Impact Expertise and its implementing regulations.

Transboundary issues

21. The draft Law provides measures to identify transboundary impact and formally acknowledge this fact. For the rest of the procedure, the draft Law merely refers to applicable international instruments.
22. The article of the draft Law entitled “Review of the Fundamental Document and the Proposed Activity with Likely Transboundary Impact” states that, in case of likely transboundary impact on another country, the SER of the fundamental document or the proposed activity shall be carried out in accordance with international agreements of Armenia. For every case of a transboundary impact of the fundamental document or proposed activity, the Government of Armenia shall adopt a procedure of SER in accordance with international agreements of Armenia and this Law. The decision on the fundamental document and the proposed activity with likely transboundary impact shall be made by the Government of Armenia with consideration of the SER conclusion.
23. In comparison with the current Law on Environmental Impact Expertise the draft Law on SER has fewer procedural provisions. For some EIA issues (e.g. public participation and development of EIA documentation), the draft Law does not envisage all the necessary details, but expects implementing regulations to do so within one year of adoption of the Law. No such implementing regulations had been drafted by the Committee’s thirteenth meeting. However, in the representations to the Committee provided by Armenia in response to the draft findings and recommendations, Armenia indicated that the drafting of implementing regulations on public participation was ongoing. However, the draft regulations were not made available to the Committee.

III. CONSIDERATION AND EVALUATION

24. Compliance concerns both legal implementation and practical application. In this instance, and in the absence of practical experience, the Committee has examined the legal implementation of the Convention, particularly with regard to its Article 2, paragraph 2.
25. The Committee considers that the lack of some procedural provisions and some implementing regulations, as well as insufficient control mechanisms, may reduce the effectiveness of the existing EIA legislation and may explain in part the reported lack of practical experience with EIA.
26. There are some concerns regarding the adequacy of the draft Law, especially with respect to the transboundary procedure. For some other EIA issues (see para. 23 above), the draft law does not envisage all the necessary details, but expects implementing regulations to do so.

IV. FINDINGS

27. Having considered the above, the Committee adopts the following findings, with a view to bringing them to the attention of the Meeting of the Parties.

28. 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.

29. Furthermore, the Committee is not convinced that the current EIA framework would be capable of identifying activities likely to have a significant adverse transboundary impact that would trigger the transboundary EIA procedure envisaged by the Convention. Nevertheless, the current Law, which provides more procedural provisions, seems better able to implement EIA for projects as foreseen by the Convention than the draft Law on SER.

30. The Committee considered that the following areas are insufficiently addressed or are unclear:

- (a) The situation in which Armenia is the affected Party, particularly regarding the reception of a notification and of EIA documentation, as neither the current legislation nor the proposed draft Law appear to address this situation;
- (b) Identification of the responsible authorities;
- (c) Sending a notification as a Party of origin;
- (d) The detailed content of the EIA documentation;
- (e) Sending the EIA documentation;
- (f) Consultations;
- (g) The procedure for public hearings, although the issue of regulations in this regard is envisaged by the current Law;
- (h) Timeframes for public participation and modalities of participation at different stages;
- (i) The definition of impact, which in the current Law is not in line with that in the Convention, but may be resolved by definitions in the proposed draft Law.

31. The Committee is of the opinion that procedural differences between EIA and SEA imply that separate provisions on EIA and SEA are preferable and that the same provisions should not attempt to address both issues.

32. 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.

V. RECOMMENDATIONS

33. The Committee recommends that the Meeting of the Parties:

- (a) Endorse the findings of the Implementation Committee regarding Armenia;
- (b) Request Armenia to revise its legislation in accordance with the Committee's findings to ensure full implementation of the Convention;
- (c) Include in the workplan an activity supporting Armenia through technical assistance in drafting the necessary legislation. This technical assistance shall be

undertaken by a consultant to be nominated by the Implementation Committee and financed from the budget of the Convention;

(d) Welcome Armenia's plan to carry out a pilot project on transboundary EIA and to elaborate a bilateral agreement to support implementation of the Convention, further to the outcome of the capacity-building workshop held in Yerevan in September 2007;

(e) Request Armenia to report to the Implementation Committee by the end of 2009 on actions taken to implement the above recommendations.
