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

**REPORT OF THE FIFTH MEETING
OF THE IMPLEMENTATION COMMITTEE**

1. The fifth meeting of the Implementation Committee took place in Geneva from 18 to 19 December 2003.
2. Representatives from the following Parties, members of the Committee, attended the meeting: Armenia, Canada, Finland, Netherlands, Slovakia, the former Yugoslav Republic of Macedonia and the United Kingdom. The representative of the Republic of Moldova was unable to attend.
3. Mr. Roger Gebbels, Chairman, opened the meeting. The Committee adopted the agenda prepared by the lead country.

I. DRAFT DECISION III/2 ON REVIEW OF COMPLIANCE

4. The Committee discussed how criteria might be developed for (i) the consideration of information other than submissions from Parties; (ii) the participation of Parties that were not members of the Committee and of observers in its meetings; and (iii) questions relating to its membership when considering matters under the Protocol on Strategic Environmental Assessment. These issues were reflected in the draft decision for consideration and finalization at the seventh meeting of the Working Group on Environmental Impact Assessment (EIA) (28-30 January 2004) (MP.EIA/WG.1/2004/2).

II. DISCUSSION OF ANY POTENTIAL NON-COMPLIANCE ISSUES

5. A copy of a letter sent by a non-governmental organization (NGO) to a Party regarding a potential non-compliance issue had been received by the secretariat and was immediately made available to the Implementation Committee. The Committee noted receipt of the letter by the secretariat.

6. The Committee discussed further the potential non-compliance issue discussed at its previous meeting. The secretariat had replied, in accordance with the Committee's request at its fourth meeting (MP.EIA/WG.1/2004/3, para. 10), to the NGO which had sent the information. The secretariat had received further information on the same issue from the NGO on 11 December 2003.

7. The Committee agreed that it should acknowledge the latest communication and that its response should reflect the views of all its members. The majority agreed not to consider the information, because considering unsolicited information from NGOs and the public relating to specific cases of non-compliance was not within the Committee's existing mandate. A minority disagreed, interpreting the present mandate (decision II/4, app., para. 5) to mean that there were no restrictions on how the Committee became aware of a case of possible non-compliance, preferring to examine the information further.

8. The Committee agreed to request the secretariat to send a letter to the NGO, with a copy to the Party alleged to be the Party of origin, in reply to the information received on 11 December 2003 and reflecting the above.

III. OUTSTANDING POINTS FOR CONSIDERATION BEFORE THE THIRD MEETING OF THE PARTIES

9. Following a suggestion from the representative of Slovakia, the Committee agreed that the provisional agenda for each of its meetings should indicate which items were open and which were closed to the public.

10. The Committee noted the request from the Working Group on EIA at its sixth meeting (MP.EIA/WG.1/2003/7) to consider Article 9 of the Convention on research programmes. It noted the obligation on Parties to exchange the results of research programmes listed in Article 9 and encouraged Parties to comply with this obligation.

11. The Committee discussed how to address submissions on possible non-compliance that might be subject to similar proceedings in another international body, and decided that no conclusions were necessary at this stage. However, the Committee noted a case currently before the Court of Justice of the European Communities (C-459/03: Commission v Ireland) that could have implications for its work and requested its representatives from Member States of the European Community to inform it of the outcome of the case.

12. The Committee noted that the delegations of Croatia, Germany, Kyrgyzstan and Poland had expressed an interest in becoming members of the Implementation Committee, replacing Canada, the Netherlands, the Republic of Moldova and the United Kingdom, the outgoing

members. The remaining members of the Committee thanked the outgoing members and in particular Mr. Roger Gebbels, the outgoing Chairman, for their contributions.

13. The secretariat drew the attention of the Committee to the full funding for the participation of representatives from countries in transition, generously provided by the delegation of the United Kingdom as lead country, beyond what was required by the criteria established by the Committee on Environmental Policy. The Committee was of the view that strict application of these criteria could affect the participation of certain members in its future meetings. The Committee therefore asked the Working Group on EIA to consider this matter when discussing the future work plan, budget and financial arrangements to be proposed at the third meeting of the Parties. The Committee suggested that the fundamental importance of the compliance reviews meant that its work should be part of the core budget of the Convention.

IV. ANY OTHER BUSINESS

14. The Convention applied to proposed activities likely to have significant adverse transboundary impact (Art. 2) and provided limited guidance on the determination of environmental significance in Appendix III, with reference to the size, location and effects of a proposed activity. In this respect, the Committee noted that the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents had agreed that: "The following two location criteria shall apply for the purpose of identifying hazardous activities capable of causing transboundary effects under the Convention:

(a) Within 15 kilometres from the border, for activities involving substances that may cause a fire or explosion or involving toxic substances that may be released into the air in the event of an accident;

(b) Along or within the catchment areas of transboundary and border rivers, transboundary or international lakes, or within the catchment areas of transboundary groundwaters, for activities involving substances falling under category 3, 4, 5 or 8 of part I of annex I to the Convention. A catchment area of a transboundary river or lake is defined as the whole drainage area of this river or lake with a common outlet." (ECE/CP.TEIA/2, annex IV, app., para. 5)

It was understood that this decision would not affect the implementation of the Convention on EIA.

15. The Committee recalled that at its previous meeting it had agreed to discuss how to report on its activities and make recommendations regarding compliance with the Convention at each meeting of the Parties (MP.EIA/WG.1/2004/3). It was also noted that it met regularly and that a meeting of the Parties usually took place once every three years. This could lead to a situation where the Committee had prepared a recommendation regarding compliance with the Convention that could be considered by the Meeting of the Parties only at a very late stage. However, the practical circumstances of the case might require action to be taken earlier. The Committee agreed to bring this matter to the attention of the Working Group on EIA at its next meeting.

16. The meeting was closed on Friday, 19 December 2003.