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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 tenth meeting of the Implementation Committee

Note by the secretariat

1. The Implementation Committee held its tenth meeting in Berlin on 9-10 October 2006.
2. Representatives from the following Parties members of the Committee attended the meeting: Armenia (Ms. Margarita Korkhmazyan), Croatia (Mr. Nenad Mikulic), Finland (Ms. Seija Rantakallio), Germany (Mr. Matthias Sauer), Kyrgyzstan (Ms. Gulfiya Shabaeva), Slovakia (Mr. Tomáš Černohous) and The former Yugoslav Republic of Macedonia (Ms. Menka Spirovska). The Committee member from Poland (Mr. Jerzy Jendroska) had informed the Committee that he was unable to participate in the meeting.

3. Ms. Rantakallio, Chair, opened the meeting.
4. Mr. Sauer welcomed the Committee to Berlin.
5. The Committee adopted its agenda as prepared by the secretariat.
6. The Committee agreed that the secretariat write to Poland on behalf of the Chair: (a) expressing the importance of continuous input from all members of the Committee; (b) noting with concern the repeated absences of Mr. Jendroska; and (c) asking Poland to make every effort to ensure its representation at future meeting of the Committee.

I. Criteria for dealing with information other than submissions from Parties

7. The Committee discussed the advice provided by the Working Group on Environmental Impact Assessment (EIA), at its ninth meeting, on the Committee's proposals for: (a) sources of information by which the Committee might become aware of a possible case of non-compliance; and (b) criteria that the Committee should take into account in determining whether to begin a Committee initiative (para. 9 of, and the annex to, ECE/MP.EIA/WG.1/2006/2). The Working Group on EIA had recommended adjustments to these proposals and that the proposals not be included in a revised description of the Committee's structure and functions, replacing the appendix to decision III/2. The Committee agreed to include the proposals, amended as suggested by the Working Group on EIA, in its draft operating rules.

II. Review of the compliance reporting system

A. Compliance reporting system

8. The secretariat reported that it had received 27 completed revised questionnaires on the implementation of the Convention in the period 2003-2005, of which 24 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.
9. The Committee expressed its concern that many Parties had not yet responded to the revised questionnaire. It agreed to report to the fourth meeting of the Parties on those Parties that had not responded, and to highlight those that had also not responded to the original questionnaire. Further, the Committee agreed that it might consider approaching Parties that do not respond to questionnaires to enquire how they were implementing the Convention.
10. The Committee supported the intention of the secretariat to inform Parties that it could not include in the draft second review of implementation any completed questionnaire received after 30 November 2006 for practical reasons. The Committee asked the secretariat to include the content of paragraph 9 above in that notice, together with a reference to paragraph 8 of the report of its sixth meeting regarding whether the failure to submit reports, or inadequate reporting, might be considered as a compliance matter in the future (MP.EIA/WG.1/2005/3). The Committee further suggested that the secretariat remind Parties that Committee members have been appointed to assist Parties in completing the questionnaire.

11. The secretariat asked that Committee members assist it in editing the draft second review of implementation in January and February 2007. Mr. Mikulic, Mr. Sauer and Ms. Shabaeva agreed to contribute to this work and the Committee suggested that Mr. Jendroska would join them. The Committee considered it important that the members participate in preparing the draft review, as the Committee will be examining the document formally after the next meeting of the Parties.

B. General compliance issues

12. The Committee discussed general compliance issues reported in the previous review of implementation on the basis of reports by Committee members.

13. The Committee first continued from its previous meeting its discussion of the implementation of the Convention's notification requirements, focusing on the stage of the national EIA procedure at which notification occurs (Art. 3.1 of the Convention). The Committee suggested that Parties adopt a precautionary approach, including early consultation with potential affected Parties as to whether notification was necessary, in order to avoid problems when a notification comes at a very late stage in the procedure.

14. The Committee then examined general compliance issues related to the final decision (Art. 6), on the basis of a paper prepared by Mr. Sauer. On the basis of the answers to the previous questionnaire the Committee concluded that there were few difficulties with the implementation of this provision, especially with regard to Article 6, paragraphs 1 and 2. Parties perhaps needed more practice in the application of Article 6, paragraph 3. It was noted that it was difficult to assess the influence of EIA on decision-making.

15. Finally, the Committee discussed general compliance issues related to research programmes (Art. 9). It observed that there had been very little experience in implementing this provision. Parties could be urged to share research results through responding to the questionnaire, including by indicating where results would be found, preferably in official languages of UNECE. Such results might come from research into transboundary EIA, but also from research in connection with national EIA that could also be useful to others in the transboundary context, e.g. in the areas of evaluation, monitoring and methodological research. The Committee also suggested that the workplan adopted by the fourth meeting of the Parties might reflect the requirement of Article 9 so as to encourage good practice.

16. The Committee suggested that Ms. Shabaeva, Ms. Spirovska, Mr. Jendroska and the Chair would examine the draft of its report to the fourth meeting of the Parties with a view to strengthening its recommendations on general compliance issues.

C. Specific compliance issues

17. The Committee continued its consideration of specific compliance issues identified through the examination of the previous review of implementation.

18. The secretariat had written to Finland on behalf of the Vice-chair, Ms. Spirovska, as requested by the Committee at its eighth meeting, asking Finland to inform the Committee of

progress with planned measures to strengthen compliance (para. 17 of ECE/MP.EIA/WG.1/2006/3). The Committee took note of an email reply from Finland indicating that: (a) Finland had not been the affected Party for any projects subject to the Convention since its letter to the Committee in October 2005; and (b) it would inform the Committee when it had been able to apply the principles for public participation set out in that letter.

19. The secretariat reported that it had written to Kyrgyzstan on behalf of the Chair, as requested by the Committee at its previous meeting (para. 20 of ECE/MP.EIA/WG.1/2006/4), stating that the Committee was satisfied with the information provided and would not consider the matter further.

20. The secretariat had also written to Moldova on behalf of the Chair, as asked by the Committee at its previous meeting (para. 22 of ECE/MP.EIA/WG.1/2006/4), requesting information about that Party's procedure for carrying out transboundary EIAs. The Committee noted the response from Moldova dated 15 August 2006. Having considered the response and having the possibility to examine at the same time the completed revised questionnaire submitted in April 2006 by Moldova, the Committee agreed that it was satisfied with the information. The Committee asked the secretariat to write to Moldova on behalf of the Chair: (a) thanking it for its response; (b) noting that the Committee had, by reference to the completed revised questionnaire, concluded that it had no specific concerns regarding the transboundary EIA procedure in Moldova; and (c) requesting that the correspondence between the Committee and Moldova be placed on the Convention's website.

21. Finally, the secretariat had written to Armenia on behalf of the Chair, as requested by the Committee at its eighth meeting (para. 16 of ECE/MP.EIA/WG.1/2006/3), asking for further information and offering different means by which the Committee might provide any required assistance with compliance. The Committee examined a draft reply from Armenia dated 6 October 2006 and welcomed Armenia's intention to provide a formal reply shortly.

III. Structure and functions of the Implementation Committee when considering matters under the Protocol on Strategic Environmental Assessment

22. The Committee agreed that Mr. Sauer continue to represent the Committee in the small working group on procedural and institutional issues under the Meeting of the Signatories to the Protocol on Strategic Environmental Assessment, and that he contribute to the preparation of a consolidated draft decision on the membership of the Committee once the Protocol is in force.

IV. Operating rules

23. The Committee took note of the advice on possible operating rules for the Committee provided by the Working Group on EIA at the Group's ninth meeting, particularly with regard to the suggestion that a legally-sound and evidence-based argument was needed for introducing such rules (para. 10 of, and the annex to, ECE/MP.EIA/WG.1/2006/2). The Committee reviewed revised draft operating rules prepared by Mr. Sauer and suggested minor revisions. The Committee agreed that its members outline how additional operating rules might assist the Committee in carrying out its functions set out in paragraphs 5 and 6 of the appendix to decision

III/2. It also agreed that all such suggestions be sent to Mr. Sauer by 11 December 2006 and asked that he then prepare revised draft operating rules for consideration by the Committee at its next meeting.

V. Other workplan activities

A. Experience in public involvement

24. The Committee agreed to discuss this issue at its next meeting.

B. Encouraging self-referral

25. The Chair and Ms. Spirovska presented a draft form that Parties could use when making a submission regarding their own compliance with the Convention. The Committee made some suggestions for improving the form and asked that the Chair and Ms. Spirovska submit a revised draft to the next meeting of the Committee.

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

26. The Committee discussed the draft prepared by the secretariat of the Committee's report to the fourth meeting of the Parties. The Committee asked the secretariat to circulate a revised draft by 31 October 2006, incorporating the outcomes of the meeting, for review by the Committee. The Committee agreed to send comments on the revised draft to the secretariat by 11 December 2006. Based on those comments, Ms. Shabaeva, Ms. Spirovska, Mr. Jendroska and the Chair, with support from the secretariat, will be requested to prepare a next draft for the next meeting of Committee.

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

27. The Committee discussed an early draft of the decision on the review of implementation, to which the draft second review of implementation will be appended. The Committee asked the secretariat to support the Bureau in the preparation of the draft decision, proposing that the draft decision might suggest modification of the current questionnaire, if necessary.

28. The Committee also discussed a draft decision on the review of compliance as prepared by the Chair, to which will be appended: (a) the draft Committee's report to the fourth meeting of the Parties; (b) the draft operating rules; and, if necessary, (c) a revised description of the structure and functions of the Committee. The Committee suggested that Ms. Shabaeva, Ms. Spirovska, Mr. Jendroska and the Chair would continue to develop the draft for consideration by the Committee at its next meeting.

29. The Committee also considered draft elements, prepared by the secretariat, for possible inclusion in the workplan and budget for the period between the fourth and fifth meetings of the Parties. The Committee considered it important, in view of the first review of implementation, to include a seminar on legislation and procedures for implementation of the Convention, within a workplan activity on the exchange of good practices. On the basis of the discussion, the Committee requested the secretariat to prepare revised draft elements and to circulate them for

comments to the Committee by 31 October, with comments to be sent back to the secretariat by 20 November 2006. A second round of commenting would be arranged if necessary. The secretariat should then submit the draft elements, amended as appropriate, to the Bureau by 22 December 2006, as decided by the Working Group on EIA (para. 36 of ECE/MP.EIA/WG.1/2006/2).

VI. Inquiry procedure

30. The secretariat reported on the conclusion of the inquiry procedure initiated at the request of Romania in August 2004 and on the opinion of the inquiry commission, which had been submitted to Romania and Ukraine and to the Executive Secretary of the UNECE on 10 July 2006.

31. The Committee requested the Chair to write to Ukraine on behalf of the Committee, in the light of the inquiry procedure and inquiry commission's opinion that the first phase of the project concerned would likely have significant adverse transboundary impact, asking how Ukraine was planning to apply the Convention to the project, what was the status of the project and how its construction was expected to progress. Further, the Committee asked that Ukraine be informed that this information might be important for the Implementation Committee to identify how it might promote the application of the Convention.

VII. Submission by Romania

32. Romania had made a submission to the Committee in May 2004 with regard to the same project that was later the subject of the inquiry procedure. The Committee therefore also requested the Chair to write to Romania on behalf of the Committee, referring to the inquiry procedure and to paragraph 15 of the description of the Committee's structure and functions, and informing Romania that the Committee assumed that Romania's submission of May 2004 was no longer valid, taking into account the outcome of the related inquiry procedure. This meant that the Committee was not planning to consider the submission further. If Romania wished the Committee to consider further that submission, in view of the more recent steps taken by Ukraine concerning the project, Romania should indicate this in writing. If the Committee were not to receive a response within one month it would consider this matter closed. Further, the Committee asked that Romania be informed that the Committee was nevertheless intending to contact Ukraine regarding its response to the outcome of the inquiry procedure.

VIII. Other business

33. The secretariat had received no submissions by Parties.

34. The Committee took note of the European Court of Justice Case C-459/03 (European Commission v. Ireland). It agreed to discuss the case at its next meeting.

35. The Committee also took note of the information provided in a letter from several non-governmental organizations in The former Yugoslav Republic of Macedonia regarding a planned nuclear power plant in Bulgaria.

36. The Committee also decided to discuss at its next meeting the secretariat's proposal on whether the Committee might have a role in advising Parties on how they can ensure compliance with the Convention if they are also party to another agreement providing for transboundary EIA.
37. The Committee expressed its thanks to Germany for hosting its meeting.
38. The Committee decided to meet next in Skopje on 13-14 February 2007.
39. The Chair closed the meeting on Tuesday, 10 October 2006.