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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
(Sixth meeting, Geneva, 27-29 October 2003)
(Item 3 (b) of the provisional agenda)**

**REPORT OF THE THIRD MEETING
OF THE IMPLEMENTATION COMMITTEE**

1. The third meeting of the Implementation Committee took place in Geneva from 10 to 11 March 2003.
2. Representatives from the following Parties, members of the Implementation Committee, attended the meeting: Armenia, Canada, Finland, Netherlands, Slovakia and the United Kingdom. The representatives of the Republic of Moldova and the former Yugoslav Republic of Macedonia were unable to attend.
3. Background documents were available to the participants for their consideration, including an informal discussion paper prepared by the Canadian delegation, an informal note from the President of the Committee regarding public participation, the Rules of Procedure of the Convention on Environmental Impact Assessment (EIA) in a Transboundary Context (ECE/MP.EIA/3), decision II/4 on review of compliance by the Meeting of the Parties to the EIA Convention (ECE/MP.EIA/4, annex IV), the reports of the first and second (MP.EIA/WG.1/2003/3) meetings of the Implementation Committee, a review of Compliance with Multilateral Environmental Agreements prepared by the delegation of the United Kingdom (MP.EIA/WG.1/1999/7), and the report of the fifth meeting of the Working Group on EIA (MP.EIA/WG.1/2003/2). The Committee used for its deliberations the agenda prepared by the lead country, which was adopted with minor amendments.

I. FOLLOW-UP TO THE FIFTH MEETING OF THE WORKING GROUP ON EIA

4. The Committee took note of the outcome of the fifth meeting of the Working Group relevant to its work.

II. PUBLIC PARTICIPATION

5. The Canadian delegate presented a paper on public participation in the operation of implementation and compliance committees for several international treaties and multilateral agreements, with reference to the following five public participation options discussed at the second meeting of the Implementation Committee:

- (i) Public to be informed of submissions to the Implementation Committee
- (ii) Public able to provide information to the Implementation Committee
- (iii) Public attendance at meetings of the Implementation Committee
- (iv) Public initiates a compliance procedure before the Implementation Committee
- (v) Direct and active participation in meetings of the Implementation Committee

6. The Committee then reviewed the five options as below, taking into account the importance of transparency, efficiency of procedure, decision-making, resources and improving compliance, and made recommendations where appropriate.

A. Option (i): Public to be informed of submissions to the Implementation Committee

7. The reports of the meetings of the Committee would be made publicly available as they were submitted to the Working Group on EIA. Similarly the reports of the Committee's activities, to be drafted in accordance with paragraph 9 of the appendix to decision II/4 of the Meeting of the Parties, and reports requested by the Meeting of the Parties under paragraph 3 (d) of the appendix, would be made publicly available as they were submitted to the Meeting of the Parties.

8. The Committee considered that the agenda of each meeting of the Committee should be made publicly available (via the Convention's web site), although the Committee would decide on the information to be included in the agenda.

9. The Committee considered that the need for general flexibility would, in exceptional instances, allow for the non-disclosure, in its documents and reports, of the name of a concerned Party at that Party's request. The Committee expressed its hope that this provision would encourage Parties to report on their own compliance failures, an option described in paragraph 4 (b) of the appendix to decision II/4. Working documents and information relating to specific submissions would not be published and their contents would be treated as confidential if requested. This approach was in line with the confidentiality provision of paragraph 7 of the appendix.

B. Option (ii): Public able to provide information to the Implementation Committee

10. In the context of this option, the Committee would be able to seek information from the public, in line with the new text of paragraph 6 (e) of the appendix to decision II/4 (as agreed at the fifth meeting of the Working Group (MP.EIA/WG.1/2003/2, para. 13)). If the Committee received unsolicited information, it might review the need for a procedure for processing such information. The Committee would then report back to the Parties at their fourth meeting on how the Committee might deal with unsolicited information.

C. Option (iii): Public attendance at meetings of the Implementation Committee

11. The Committee discussed the application of rule 26 of the Convention's Rules of Procedure: "The meetings of the Parties and the meetings of its subsidiary bodies established by the Meeting shall be held in public unless the Meeting decides otherwise."

12. With regard to compliance matters under paragraphs 4 and 5 of the appendix to decision II/4, the Committee decided that there should be a presumption of closure during their consideration, unless the concerned Parties and the Committee decide otherwise (see the Basel Convention's mechanism for promoting implementation and compliance (UNEP/CHW.6/9, annex, para. 15): "Meetings dealing with specific submissions relating to the compliance of an individual Party shall not be open to other Parties or the public, unless the Committee and the Party whose compliance is in question agree otherwise").

D. Option (iv): Public initiates a compliance procedure before the Implementation Committee

13. Noting that only the Aarhus Convention provides a mechanism for the public to initiate a compliance procedure, while also noting that the estimated budget for the Compliance Committee under the Aarhus Convention is US\$ 300,000 per annum (MP.PP/2002/14), the Committee decided to propose that this matter should not be addressed at this stage. It was recommended that the relevant Aarhus Convention activities should be monitored. This matter would be reviewed in the light of experience and a recommendation might be made to the Parties at their fourth meeting.

E. Option (v): Direct and active participation in meetings of the Implementation Committee

14. Paragraph 1 of the appendix to decision II/4 allowed a Party to nominate whomever it wished: nothing prevented it from nominating an individual from an NGO or from the private sector. It was noted, however, that all Committee members would be bound by the rules of confidentiality.

15. The consensus of the Meeting was that there was no immediate need to make a provision for active public participation. The need for such a provision would be reviewed in the light of experience and a recommendation might be made to the Parties at their fourth meeting.

III. HANDLING COMPLIANCE REVIEWS: PROCEDURES

16. The Committee discussed in detail the specific provisions in the appendix to decision II/4. The Committee considered the possibility of examining a case study as a means of reviewing the adequacy of the procedures set out in the appendix and gaining experience in its work.

17. In discussing the application of paragraphs 8 and 10 of the appendix, some Committee members raised concerns regarding the participation in the Committee of a Party that is the subject of a submission. The Committee decided to seek the advice of the Implementation Committee under the Convention on Long-range Transboundary Air Pollution, and would welcome the views of the Working Group on EIA.

IV. REPORT AND RECOMMENDATIONS FOR DRAFT DECISIONS FOR THE THIRD MEETING OF THE PARTIES

18. The Committee requested its President, with the assistance of the secretariat, to draft a proposal for a new decision on the procedures for review of compliance, based on decision II/4, for consideration at the seventh meeting of the Working Group on EIA (January 2004).

19. It was agreed that paragraph 4 of decision II/4, as it would appear in the new proposed decision, should allow for the preparation of proposals to expand the role of the Committee to cover the review of the amendment to the EIA Convention and the Protocol on Strategic Environmental Assessment (SEA), as well as possible future proposals amending the provisions for public participation. Paragraph 5 of the decision should be amended to ensure that the amendment and the Protocol were also addressed.

20. During discussions, the Committee noted the importance of self-referral and encouraged Parties to come forward. The Committee recommended that the proposed new decision should include a paragraph to this effect.

21. The Committee noted that its recommendations were made to the Meeting of the Parties, which may then decide upon appropriate general measures to bring about compliance with the Convention and measures to assist an individual Party's compliance. The Committee realized that there might be a problem of timing when it had prepared a recommendation on a compliance case that would be considered by the Meeting of the Parties only at a later date, in circumstances where action might need to be taken by the non-complying Party before that date. It decided to discuss this issue further at a later meeting.

22. The Committee recommended that the changes set out below should be made to the appendix to decision II/4.

23. Add to paragraph 2: The agenda for each meeting shall be made publicly available before the meeting.

24. Include a new paragraph 2 bis: Meetings will be open for (passive) public attendance, unless otherwise decided by the Committee. Parts of meetings dealing with specific submissions relating to compliance shall not be open to other Parties or to the public, unless the Committee

and the Party whose compliance is in question agree otherwise.

25. As previously accepted by the Working Group, for paragraph 6 (e) read: As appropriate, seek the services of scientific experts and other technical advice or consult any other relevant sources.

26. As previously accepted by the Working Group, add to paragraph 9: Committee reports shall be available to the public.

27. In paragraph 11, in the first sentence, for the Parties read: The Meeting of the Parties

V. SEA PROTOCOL

28. Noting article 14, paragraph 6, of the SEA Protocol, the Committee agreed that the appendix to decision II/4 might be used as the basis for an equivalent decision of the first meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol.

29. It was also noted that the amendment to the Convention was likely to enter into force before the Protocol, so that the modalities for extending the mandate of the Implementation Committee should first be addressed with respect to the amendment.

VI. ANY OTHER BUSINESS

30. The secretariat requested members of the Implementation Committee to prepare a case study to be examined at the next meeting.

VII. NEXT MEETING

31. The Committee decided to hold its next meeting from 30 to 31 October 2003, immediately following the sixth meeting of the Working Group on EIA.