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

Implementation Committee

**REPORT OF THE IMPLEMENTATION COMMITTEE ON ITS FIFTEENTH
SESSION, HELD FROM 28 TO 30 OCTOBER 2008 IN GENEVA**

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INTRODUCTION

1. The fifteenth session of the Implementation Committee took place in Geneva from 28 to 30 October 2008.

2. The following members of the Implementation Committee attended the session: Ms. Tatyana Javanshir, replacing Mr. Gahraman Khalilov (Azerbaijan); Ms. Nina Stoyanova (Bulgaria); Mr. Nenad Mikulic (Croatia); Mr. Matthias Sauer (Germany); Ms. Rakia Kalygulova, replacing Mr. Kubanychbek Noruzbaev (Kyrgyzstan); Mr. Jerzy Jendroska (Poland); Ms. Diana Olaru (Republic of Moldova); and Ms. Vesna Kolar-Planinsic (Slovenia).

3. Delegations from Romania, Turkey and Ukraine were present as observers during those parts of the session that were open to observers (see para. 6 below).

I. ADOPTION OF THE AGENDA

4. The secretariat opened the meeting and welcomed the members of the Committee. The Committee adopted the agenda as set out in ECE/MP.EIA/IC/2008/1.

II. MEMBERSHIP OF THE IMPLEMENTATION COMMITTEE

5. The members of the Committee introduced themselves. **The Committee then elected Mr. Sauer as Chair, and both Ms. Kolar-Planinsic and Ms. Olaru as Vice-Chairs**, while recalling paragraph 1 (a) of the appendix to decision III/2 (ECE/MP.EIA/6, annex II).

6. The Committee agreed that observers might not be present during the Committee's deliberations under agenda items 4, 5 and 6 (as reported in chapters IV, V and VI below, respectively), but that there should be a presumption that the Committee's sessions generally be open to observers, in accordance with rule 17, paragraph 1, of the Committee's operating rules (ECE/MP.EIA/10, decision IV/2, annex IV). The Committee invited the observers to join the session and informed them of its conclusions.

7. The Chair introduced the new members of the Committee (those nominated by Azerbaijan, Bulgaria, Republic of Moldova and Slovenia) to the key documents used by the Committee, including:

- (a) The text of the Convention;
- (b) The Meeting of the Parties' decision III/2 on review of compliance, including its appendix on the structure and functions of the Implementation Committee and procedures for review of compliance (ECE/MP.EIA/6, annex II);
- (c) The Meeting of the Parties' decision IV/2 on review of compliance, including its annex IV on the operating rules of the Implementation Committee (ECE/MP.EIA/10);
- (d) The second review of implementation, as set out in the annex to decision IV/1 (ECE/MP.EIA/10).

III. REVIEW OF DECISIONS BY THE MEETING OF THE PARTIES

8. On the basis of an informal document prepared by the secretariat, the Committee reviewed decisions taken by the fourth meeting of the Parties, particularly on the review of implementation (decision IV/1), the review of compliance (decision IV/2), the adoption of the workplan (decision IV/7) and the budget and financial arrangements (decision IV/8), as included in the report of the fourth meeting (ECE/MP.EIA/10).

IV. SECOND REVIEW OF IMPLEMENTATION

9. The secretariat presented an informal document highlighting general and specific compliance issues identified in the second review of implementation (decision IV/1, annex), and in the completed questionnaires on which it was based. The Committee took this document into account in its work (decision IV/1, para. 4).

10. The Committee agreed that the findings of the second review (listed in decision IV/1, para. 3) should also be taken into account in its work and reflected in the revised questionnaire. The revised questionnaire would ask what Parties were doing to address these issues, or to explain why no action was envisaged. The Committee noted that the Working Group on Environmental Impact Assessment (EIA), when reviewing the revised draft questionnaire, would therefore become aware that the Committee was following up on these findings. **The Committee also agreed to ask the Bureau to include in the agenda for the next meeting of the Working Group an item requesting delegations to report on their follow-up to the findings of the second review.**

11. The Committee agreed that each member would examine a part of the second review to identify additional possible general compliance issues, as set out in the table.

Subject	References (section of review, within part II, annex to decision IV/1: question numbers)	Reviewer
General provisions (article 2), including public participation	A: Q1–6 B: Q12 C: Q25, Q27 N: Q53 (clarity of the Convention) K: Q50(e) (experiences)	Mr. Jendroska
Notification (article 3)	B: Q7–11, 13–16 K: Q50(a)	Mr. Mikulic
Preparation of the EIA documentation (article 4)	C: Q17–24, 26 K: Q50(b)–(d)	Ms. Javanshir and Ms. Kalygulova
Consultation (article 5)	D: Q28–30 K: Q50(f)	Ms. Stoyanova
Final decision (article 6)	E: Q31–35 K: Q50(g)	Mr. Sauer
Post-project analysis (article 7), Bilateral agreements (article 8), Research programmes (article 9)	F: Q36–37 G: Q38–39 H: Q40 K: Q50(h)–(i)	Ms. Olaru
Cases	J: Q44–47 K: Q48–49, Q50(j)	Ms. Kolar- Planinsic

12. Mr. Sauer and Ms. Stoyanova agreed to present the findings of their respective reviews at the Committee's next session.

13. The Committee recalled that Albania was the only Party not to have returned a completed questionnaire on its implementation of the Convention in the period 2003–2005. **The Committee requested the Chair to write on its behalf to Albania to inquire into its implementation of the Convention.**

14. The Committee noted that Greece and Slovenia had not notified any Party under the Convention in the period 2003–2005, and that Austria and Hungary had notified only once, despite each of these Parties having a relevant level of economic activity (reflected in gross domestic product), a relevant population density and land borders with other Parties. The Committee also noted that the Walloon region of Belgium had no experience in application of the Convention in the period reviewed. **The Committee agreed that it might wish to come back to this matter at a later date and requested the secretariat, in the meantime, to contact the focal points in these Parties on behalf of the Committee to seek clarification of why these Parties had no, or little, experience as Party of origin in the reviewed period.**

15. The Committee noted that the response of Hungary to the questionnaire could indicate that its legislation does not require the identification of "reasonable alternatives". **The Committee requested the Chair to write on its behalf to Hungary to seek clarification of how Hungary identified reasonable alternatives in accordance with appendix II, paragraph (b).**

16. The Committee noted that the response of Latvia to the questionnaire could indicate that its list of activities subject to the transboundary EIA procedure was not equivalent to that in appendix I to the Convention. **The Committee requested the Chair to write on its behalf to Latvia to seek clarification of whether all activities listed in appendix I were also identified as subject to transboundary EIA in the legislation of Latvia.**

17. The Committee noted that the response of Liechtenstein to the questionnaire could indicate that its EIA procedure, whether or not transboundary, did not influence the decision-making process for a proposed activity. **The Committee requested the Chair to write on its behalf to Liechtenstein to seek clarification of whether the EIA procedure, whether or not transboundary, influenced the decision-making process for a proposed activity (art. 6, para. 1).**

18. The Committee noted that the response of Azerbaijan to the questionnaire could indicate that there was no national legislation on the application of the Convention. The member nominated by Azerbaijan (Ms. Javanshir) left the room in accordance with rule 17 of the Committee's operating rules. The Committee recalled that it had considered the provision in the Constitution to directly apply international agreements as being insufficient for proper implementation of the Convention without more detailed provisions in the legislation (decision IV/2, annex I, para. 64). **The Committee therefore requested the Chair to write on its behalf to the Minister of Environment of Azerbaijan, copied to the focal point and the Permanent Mission in Geneva, to seek clarification of how Azerbaijan implements the Convention.**

V. SUBMISSIONS

19. This agenda item was not open to observers according to rule 17, paragraph 1, of the Committee's operating rules.

A. New submissions

20. The Committee reviewed a letter from the Minister of the Environment of Slovenia to the European Commission, and copied to the secretariat, regarding planned activities in Italy for which Croatia considers itself a potentially affected Party. The Committee noted that the letter included a request that the Committee react to the matter addressed in the letter. Ms. Kolar-Planinsic agreed that she, as focal point for Slovenia, would make a submission directly to the secretariat to this effect. The Committee asked the secretariat to reply to the letter from the Minister once the submission addressed to the secretariat had been received.

21. The secretariat informed the Committee that there had not been any other submissions by Parties since the fourth meeting of the Parties.

B. Follow-up to decision IV/2 regarding Ukraine (paras. 7–14)

22. The Committee considered under this agenda item the question of whether to issue a caution to Ukraine (decision IV/2, para. 10), further to the January 2007 submission to the

Committee by Romania regarding the project for the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian sector of the Danube Delta (the so-called Bystroe Canal Project, hereinafter “the Project”).

23. The Committee considered the following documentation provided by the Government of Ukraine further to paragraph 9 of decision IV/2:

- (a) A report submitted by the Government of Ukraine and dated 6 October 2008;
- (b) A report submitted by the Government of Romania and dated 24 October 2008;
- (c) Information provided by both Parties on a bilateral meeting between the Governments of Romania and Ukraine held from 15 to 16 October 2008;
- (d) Information provided by the Government of Romania regarding a notification by the Government of Ukraine of dredging under Phase I of Project, dated 25 July 2008.

24. The Committee invited the delegations of Romania and Ukraine to make brief presentations and to reply to questions.

25. The delegation of Ukraine confirmed that construction and maintenance works were continuing under Phase I and that the ongoing procedure under the Convention did not address Phase I. The delegation of Ukraine also indicated that the EIA documentation for Phase II would be based on the version of the EIA documentation issued in 2007, would address the significant adverse transboundary impacts identified by the Inquiry Commission and would include a chapter on transboundary impacts.

26. The delegations of Romania and Ukraine agreed that their reports to the Committee be made available on the website of the Convention.

27. The Committee then considered whether the Government of Ukraine had fulfilled the conditions set out in paragraph 10 of decision IV/2, i.e. whether it had:

- (a) Stopped the works;
- (b) Repealed the final decision;
- (c) Taken steps to comply with the relevant provisions of the Convention.

28. The Committee considered that the first condition related to all works, but recognized that this condition was ambiguously expressed in decision IV/2 and that Ukraine could have interpreted it to mean that it related only to works in Phase II of the Project. **The Committee agreed that this first condition had been fulfilled for Phase II, but it was concerned that the Government of Ukraine had not taken steps to apply the Convention to continuing works for Phase I.** In this respect, **the Committee agreed to remind the Government of Ukraine of the findings in paragraph 69 (b) and (c) of the Committee’s findings and recommendations**

further to a submission by Romania regarding Ukraine (decision IV/2, annex I), as endorsed by the Meeting of the Parties. These findings require, as a minimum, that no further works, including operation and maintenance works, should be undertaken for Phase I without taking steps to comply with the relevant provisions of the Convention.

29. The Committee considered that the second condition related to the final decision of 28 December 2007 on Phase II of the Project. **The Committee agreed that this second condition had been fulfilled** by the Government of Ukraine in its repeal of the final decision on 11 June 2008.

30. The Committee considered that the third condition related to the application of the Convention to both Phases I and II of the Project, and, more broadly, to implementation of the Convention by Ukraine. The Committee accepted that report by Ukraine to the Committee demonstrated that the Government of Ukraine had taken steps to:

- (a) Apply the Convention to Phase II, through its notification of Romania and its meetings with Romania;
- (b) Improve the implementation of the Convention more broadly, including through the establishment under the Vice Prime Minister of Ukraine of an inter-ministerial council on the implementation of the Convention.

31. **The Committee welcomed the steps taken by the Government of Ukraine and agreed that the third condition had been broadly satisfied. However, the Committee agreed to request the Government of Ukraine to ensure that:**

- (a) **The steps taken to comply with the relevant provisions of the Convention cover also any further works related to Phase I of the Project, including operation and maintenance works;**
- (b) **The EIA documentation currently under preparation for the Project addresses, inter alia: (i) possible alternatives to the whole Project discussed with the affected Party, including the no-action alternative; (ii) the combined impact of the two phases of the Project; and (iii) the mitigation measures to minimize this combined impact.**

32. **The Committee consequently decided to request the Government of Ukraine to report in writing to the Committee on steps taken to apply the relevant provisions of the Convention to:**

- (a) **Any further works related to Phase I of the Project, including operation and maintenance works;**
- (b) **Phase II of the Project.**

33. A first report on these steps should be submitted to the Committee by 28 February 2009, for the Committee's consideration at its next session in March 2009, and a second report by 31 August 2009, for the Committee's consideration at its seventeenth session in September 2009.

34. **The Committee decided that, in the light of the above, the caution should not become effective.** The Committee approved the draft of a letter by the Executive Secretary of the United Nations Economic Commission for Europe to the Vice-Prime Minister of Ukraine, presenting the Committee's deliberations as set out above.

35. The Committee also discussed the nomination and financing of a consultant to undertake an independent review of legal, administrative and other measures of Ukraine to implement the provisions of the Convention for consideration by the Committee in the first half of 2009 (decision IV/2, para. 11). **The Committee selected a shortlist of candidates for the consultant and asked the secretariat to make the necessary arrangements for the independent review to be carried out.**

VI. COMMITTEE INITIATIVE

36. This agenda item was not open to observers according to rule 17 of the Committee's operating rules.

A. Follow-up to decision IV/2 regarding Armenia (paras. 15–17)

37. The Committee discussed the nomination and financing of a consultant to undertake technical assistance in drafting the necessary legislation to support Armenia in ensuring its full implementation of the Convention (further to decision IV/2, para. 17, and the Committee's initiative on Armenia). **The Committee nominated the same consultant who had provided a review of Armenian legislation for the Committee in 2007.** That review had formed the basis for the Committee's findings and recommendations further to a Committee initiative on Armenia (ECE/MP.EIA/10, decision IV/2, annex II). **The Committee asked the secretariat to make the necessary arrangements for the technical assistance.**

B. Information provided to the Committee

38. The Committee may examine any other compliance matter of which it may become aware, including further to the second review of implementation (part IV above), in accordance with rule 15 of the Committee's operating rules.

39. **The Committee agreed that a form for such information, developed by the secretariat, be used, with minor modifications, by sources of information in the future.** Sources of information should be encouraged to attach supporting information.

40. **The Committee agreed that it would make reference to sources of information when contacting Parties to request additional information.**

41. The Committee reviewed information provided by the Government of Ukraine, several Ukrainian non-governmental organizations (NGOs) and the secretariat regarding ongoing and planned activities in Romania. **The Committee asked the Chair to write on its behalf to Romania to request clarification as to whether, how and when the Convention would be applied to those activities within the National Territory Master Plan of Romania, adopted in 2006, relating to navigation on the Danube River.**

42. The Committee agreed that the secretariat reply to the Ukrainian NGOs indicating the actions taken.

43. The Committee agreed to consider the other information provided by the secretariat at its next session.

VII. REVISED QUESTIONNAIRE

44. The Committee deliberated modification of the questionnaire on the implementation of the Convention in the period 2003–2005. The Committee was expected to provide a revised questionnaire, for the period 2006–2009, for consideration by the Working Group on Environmental Impact Assessment (decision IV/1, para. 5). The Committee considered a draft detailed timetable for the submission of completed revised questionnaires, and for the generation of the subsequent review of implementation, to be put before the Working Group (decision IV/2, appendix III, para. 53).

45. **The Committee agreed that Ms. Kolar-Planinsic and Mr. Mikulic would compile a draft revised questionnaire by 15 January 2009, on the basis of suggestions received from other members, and from the secretariat, by 10 December 2008.** The revised questionnaire would include a question on the application by the Parties of article 3, paragraph 8, and article 4, paragraph 2, of the Convention (decision IV/1, para. 6), and reflect the findings of the second review (see para. 10 above). The Committee requested that the secretariat provide an informal Russian translation of revisions, if possible, and agreed to consider at its next session both the draft revised questionnaire and the detailed timetable.

VIII. STRUCTURE AND FUNCTIONS AND OPERATING RULES

46. The Committee noted that it was expected to keep under review and, if necessary, develop its structure and functions as well as its operating rules, in the light of the experience it has gained (ECE/MP.EIA/10, decision IV/2, para. 6). In particular, rule 17 of the operating rules might be addressed.

IX. OTHER BUSINESS

47. **The Committee requested the secretariat to prepare, for its next session, a first draft of a leaflet or booklet introducing briefly the Committee and its role, and presenting the possibility for bodies and individuals to provide information to the Committee,** further to rule 15, paragraph 1(b), of the Committee's operating rules. The leaflet would be written

particularly for local authorities and NGOs, and would be available electronically on the Convention's website.

48. **The Committee suggested that the secretariat provide information on this Convention's compliance mechanism within a training course on the use by NGOs of the compliance mechanism under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.** The course was to be held from 16 to 19 December 2008 in Geneva.

49. Mr. Mikulic and Ms. Stoyanova noted difficulties arising from the interaction between the application of the Convention and of the European Union Birds and Habitats Directives¹. The Committee suggested that this issue might be raised at the next meeting of the Working Group on Environmental Impact Assessment.

50. The delegation of Romania made a statement regarding the application of the Convention to the Bystroe Canal Project.

51. The Chair invited the observers to comment on their presence in the session. The delegation of Romania asked that it be made clearer in the provisional agenda during which items observers might be present. The delegation of Ukraine asked that the Committee might consider whether observers might participate actively in substantive discussions.

X. PRESENTATION OF THE MAIN DECISIONS TAKEN AND CLOSING OF THE MEETING

52. **The Committee decided to meet next from 10 to 12 March 2009 in Berlin.**

53. **The Committee adopted the draft report of its session prepared by the Chair and the secretariat.** The Chair then closed the meeting.

¹ Council Directive 79/409/EEC on the conservation of wild birds and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.