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

**Ad hoc Working Group on the Protocol
on Strategic Environmental Assessment**

REPORT OF THE THIRD SESSION

1. The third session of the ad hoc Working Group on the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context took place in Orvieto (Italy) from 21 to 23 November 2001.
2. It was attended by the delegations of: Albania, Austria, Belgium, Canada, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Netherlands, Norway, Poland, Romania, Slovakia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom, Uzbekistan and Yugoslavia.
3. The meeting was attended by representatives of the Commission of the European Communities. The following international and non-governmental organizations were also represented: United Nations Environment Programme (UNEP), Regional Office for Europe of the World Health Organization (WHO/EURO), European ECO Forum and International Association for Impact Assessment (IAIA).

4. The meeting was opened by Mr. Terje Lind, Chairman of the ad hoc Working Group. Mr. Francesco La Camera welcomed the participants on behalf of the host authorities. In his opening statement, Mr. Kaj Bärlund, Director of the ECE Environment and Human Settlements Division, drew the attention of the Working Group to the preparations for the Ministerial Conference "Environment for Europe" in Kiev in May 2003 and the political interest in the subjects to be covered by the protocol. He reminded delegations of the tight schedule for the finalization of the protocol to allow countries to prepare themselves for the adoption and signing at the Kiev Conference. He also underlined the lack of resources available to support the participation of countries in transition in the work on the protocol. He encouraged donor countries to make contributions to the Trust Fund and urged the representatives of countries in transition to participate actively in the negotiations.

I. ADOPTION OF THE AGENDA

5. The Working Group adopted the agenda as contained in document MP.EIA/AC.1/2001/7.

II. ELECTION OF OFFICERS

6. The Working Group confirmed Mr. Terje Lind (Norway) as Chairman, and Ms. Ursula Platzer (Austria) and Mr. Jerzy Jendroska (Poland) as Vice-Chairpersons. It elected Mr. Jaroslav Volf (Czech Republic) as its third Vice-Chairperson.

III. PREPARATION OF A DRAFT PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT

7. The Working Group continued the preparation of a draft protocol on strategic environmental assessment (SEA) on the basis of a compilation of the substantive articles for such a protocol prepared by the Chairman, as well as the draft elements included in document MP. EIA/AC.1/2001/3 and the alternative texts included in document MP.EIA/AC.1/2001/5. The last two documents had been prepared by the secretariat. Proposals by several delegations were also circulated.

8. In discussing the report of its second meeting (MP.EIA/AC.1/2001/6), the ad hoc Working Group decided that the definitions in annex I to the present report should replace the definitions included in annex II to the previous report.

9. In the discussion on article 1 on the objective of the protocol it was decided that the text in document MP.EIA/AC.1/2001/5 would be used as a basis for further discussion.

10. The Working Group, in discussing the article 2 on definitions as included in document MP.EIA/AC.1/2001/3, found that the first six paragraphs should remain as they were. In the discussion on the definition in paragraph 7 on strategic environmental assessment, some delegations argued that such a paragraph was not needed. Other delegations held that such a definition was

useful. Some delegations were in favour of a descriptive definition (listing procedural elements related to SEA), others of a normative one (focusing on the requirements for information, decision-making, participation, etc.). Delegations also provided comments on the definition in paragraph 8 on public authority. It was decided to put square brackets around certain texts and to come back to these issues at a later stage. The delegation of WHO/EURO presented a possible definition of public health, public health authorities and public health experts as included in annex II to the present report. Delegations also provided general comments on paragraphs 9, 10 and 11. The Working Group decided not to take a decision at this stage and requested its Bureau, with the assistance of the secretariat, to prepare possible definitions for its next meeting, taking into account the comments made.

11. In the discussion of article 3 on general provisions, some delegations suggested including in the protocol provisions on links between strategic environmental assessment and sustainable strategies. Some other delegations were not in favour of including such links. Other delegations argued that this could be done in a flexible manner. It was suggested that provisions on access to justice could be included into the relevant article. Some delegations held the opinion that the relevant provisions of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) could be included into the protocol, some other delegations opposed this. Other delegations found that this could be done only when necessary for strategic environmental assessment. The Working Group requested its Bureau, with the assistance of the secretariat, to draft new text on this article for its next meeting and suggested that it would concentrate on general issues.

12. Delegations provided comments on article 4 on public participation provisions and indicated that this article could concentrate on strategic decision-making. The Bureau was requested to prepare new texts on this issue.

13. The Working Group discussed articles 5 and 6 on the scope of application and screening. The Chairman, when summarizing the discussion, stressed that so far no final conclusion had been drawn on this or any other point, but that it was important to have a text for further discussion. The Working Group prepared new wording for articles 5 and 6, as included in annex III to this report. It was agreed that this text would provide the basis for discussion at a later stage. The delegation of Slovakia held that definitions of “public authority” and “strategic environmental assessment” did not need to be defined and circulated a proposal for article 5 as included in annex IV to the present report.

14. The Working Group discussed article 15 on strategic decisions with transboundary effects, some delegations proposed to integrate this article into other articles, while others were of the opinion that transboundary issues should be dealt with separately and, therefore, suggested that this article should be kept as it was. The Working Group also confirmed that article 14 on monitoring should not be combined with the article on quality control.

15. In concluding this agenda item, the Working Group requested its Bureau, with the assistance of the secretariat, to revise the texts for the substantial articles of the protocol for its next meeting. Delegations were invited to submit comments to the secretariat not later than 4 January 2002.

IV. OTHER BUSINESS

16. The delegation of Poland circulated the report of the Workshop on Subregional Cooperation which had been held on 22-23 October 2001 in Warsaw and requested the secretariat to put this report also on the web site of the Protocol. The delegation of the former Yugoslav Republic of Macedonia indicated that it would like to host the sixth meeting on the negotiations of the SEA protocol, which was scheduled to take place from 25 to 27 September 2002, and launched an official appeal to possible donor countries to assist in the organization of such a meeting.

17. The Working Group was informed that its fourth session would be held from 11 to 13 February 2002 in Warsaw at the invitation of the Government of Poland. It would be preceded by a seminar on aspects of public participation in strategic environmental assessment.

18. The meeting was closed on Friday, 23 November 2001.

Annex I

Article 2

DEFINITIONS

For the purpose of this Protocol:

- (a) **“Plans and Programmes”** means plans, programmes [, strategies] and other similar decisions [at national, regional or local level] and any modifications to them that
- (i) [Are explicitly envisaged by] [Have a basis in] [Are required by] legislative, regulatory or administrative provisions; and
 - (ii) Are subject to preparation and/or adoption by a [n] [public] authority or are prepared by a [n] [public] authority for adoption, through a formal procedure, by parliament or the Government;

with the exception of “policies” and “legal acts” as respectively defined in subparagraphs (b) and (c) below;

- (b) **“Policies” means** decisions and any modifications to them that
- (i) Set policy objectives and/or provide guidance for [public] authorities and other natural or legal persons; and
 - (ii) Are subject to preparation and/or adoption by a [n] [public] authority; and
 - (iii) [Are not explicitly envisaged by] [Do Not have a basis in] [Are not required by] legislative, regulatory or administrative provisions;
- (c) **“Legal acts”** means legislative acts, regulations and any other generally applicable legally binding normative instruments [and any amendments to them] that are prepared by a [n] [public] authority for adoption, through a formal procedure by parliament or the Government,

Annex II

**DEFINITIONS ON PUBLIC HEALTH, PUBLIC HEALTH AUTHORITIES
AND PUBLIC HEALTH EXPERTS**

Proposal by WHO/EURO

- (a) **“Public health”** is one of the efforts organized by society to protect, promote and restore people's health. It is the combination of science, skills and beliefs that are directed to the maintenance and improvement of the health of all people through collective or social actions;
- (b) **“Public health authorities”** means institutions with a statutory function to protect, promote and/or monitor the public's health, including the health of communities and of entire populations. These authorities may also have responsibility to restore people's health, by providing for the care of individuals who are ill and for the management of health care services;
- (c) **“Public health experts”** are people recognized by their peers as having skills and experience in assessing and monitoring health impacts, developing and implementing activities aimed at protecting and promoting the public's health, including the health of communities and of entire populations. Their skills differ from those needed for the health care of individuals who are ill.

Public health authorities and experts are best placed to consider the wider implications of policies, plans and programmes on human health.

Annex III

Article 5

SCOPE OF APPLICATION

This Protocol shall apply to plans, programmes, [policies and legislation/legal acts] [strategic decisions] in accordance with [the following provisions] [the provisions of articles 6-9].

Article 6

PLANS AND PROGRAMMES

1. Each Party shall ensure that an environmental assessment is carried out in accordance with articles [...] of this Protocol for plans and programmes which

(a) Are prepared for sectors such as agriculture, forestry, fisheries, energy, industry [including extraction of mineral resources], transport, [economic development, regional development,] waste management, water management, telecommunications, tourism, town and country planning or land use, [trade,] [military training grounds,] [nature conservation][and modern biotechnology]—(*the sectors to be defined*) [and] [or] set the framework for future development consent of projects listed in annex [α] [(*current Espoo list / amended Espoo list / Aarhus list*)];

(b) [Or otherwise may have significant [adverse] impacts on the environment] [[and] [or] set the framework for future development consent of projects].

2. Plans and programmes referred to in paragraph 1, (a) which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 1, (a) require a [n] [strategic] environmental assessment if the Party determines that they are likely to have significant environmental effects.

3. [The following are not subject to this Protocol;

(a) Plans and programmes whose sole purpose is to serve national defence or civil emergencies;

(b) Financial or budget plans and programmes.]

Article 7

[PROCEDURE FOR] SCREENING [PLANS AND PROGRAMMES]

1. Each Party shall determine whether plans and programmes referred to in article 6, paragraph 1 (b), [and article 6, paragraph 2,] [may] [are likely to] have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose each Party shall in all cases take into account the

criteria set out in annex I (to be defined and should include also health effects). In application of this paragraph, environmental authorities and/or health authorities shall be consulted.

[2. Each Party shall ensure that its conclusions pursuant to paragraph 1, including the reasons for not requiring a [n] [strategic] environmental assessment, are made available to the public.]

Article 8

POLICIES

[Scope of application + Screening to be decided]

Article 9

LEGISLATION/LEGAL ACTS

[Scope of application + Screening to be decided]

Annex IV

PROPOSAL FOR THE MODIFICATION OF THE ARTICLE 5
Proposal by the delegation of Slovakia

Article 5

AREA OF APPLICATION

The provisions of this Protocol shall apply to substantial development documents, such as:

- (a) Policies, plans, programmes which are prepared, in particular, for sectors energy, industry, transport, agriculture, fisheries, forestry, waste management, water management, tourism, telecommunications;
- (b) Plans and programmes which are prepared for town and country planning or land use;
- (c) Legislation/legal acts which are prepared in particular for areas set out in paragraph 1 (a), and (b).