



**Economic and Social
Council**

Distr.
GENERAL

MP.EIA/AC.1/2002/5
18 July 2002

ORIGINAL: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

**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 FIFTH SESSION

1. The fifth 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 Oslo from 6 to 8 May 2002.
2. It was attended by the delegations of: Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Kazakhstan, Latvia, Lithuania, Netherlands, Norway, Poland, Republic of Moldova, Romania, Slovakia, Spain, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom, Uzbekistan and Yugoslavia.
3. Representatives of the Commission of the European Communities attended the meeting. The following international and non-governmental organizations were also represented: Regional Office for Europe of the World Health Organization (WHO/EURO), Regional Environment Center (REC), ECO Forum, ECOGLOBE, ECOTERRA, Environmental Experts Association (EEA), International Association for Impact Assessment (IAIA) and International Public Network for Environmental Impact Assessment (IPNEA)
4. The meeting was opened by Mr. Bjørn Skaar, Political Adviser to the Minister of Environment of Norway. Mr. Nenad Mikulic, Chairman of the Bureau of the Meeting of the Parties to the Convention, thanked him for his warm words of welcome.

I. ADOPTION OF THE AGENDA

5. The agenda was adopted with the addition of the consideration of the report of the previous meeting as a new agenda item. The Chairman proposed the following procedure for reports of forthcoming meetings:

- (a) A draft report would be circulated and adopted on the last day of the meeting;
- (b) The Bureau would finalize the report, with the assistance of the secretariat, and circulate it to the delegations as soon as possible;
- (c) The delegations would be given the opportunity to come with written comments within a set time frame. These should as far as possible be made available in the three official languages by the delegations concerned;
- (d) The comments would be circulated to the delegations before the next meeting, and discussed at the meeting when considering the report.

6. The secretary reminded delegations of the need to submit proposals and amendments in writing, in electronic form, prior to the meeting and in the three official languages, so as to allow the secretariat to compile the proposals well in advance. It was therefore suggested that comments and proposals should be submitted not later than two weeks before a meeting.

II. 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 an updated text (informal document of 16 April 2002) prepared by the secretariat.

8. The articles and themes below were discussed in the following order:

- (a) Article 8 on policies (and article 9 on legislation);
- (b) Article 16 on access to justice;
- (c) Article 10 on notification (together with article 4 on public participation and article 13 on consultation);
- (d) Article 3 on general provisions:
 - (i) The references to health throughout the protocol;
 - (ii) The non-substantial articles (preamble and final clauses), the relationship to the Espoo and Aarhus Conventions, and the question of compliance.

Article 8 on policies (and article 9 on legislation)

9. The Working Group discussed the Chairman's proposal for article 8 on policies and article 9 on legislation. Its recommendatory and flexible form was found acceptable by many delegations, while others preferred a more binding obligation with regard to the principles. On the basis of the discussion and the work of a small drafting group, a new text was prepared, covering both policies and legislation, as included in annex I to this report. The EU Commission and a number of the member States of the European Community prepared a proposal on article 8 on policies and on article 9 on legislation as included in annex II to this report. The delegation of the United Kingdom proposed to include a opt-out clause in both proposals. The Working Group decided to include both texts in square brackets in the further update of the protocol for discussion at its next meeting.

Article 16 on access to justice

10. During a tour de table, a large group of delegations proposed to delete the article on access to justice without replacing it. On the basis of a subsequent discussion a small drafting group prepared a new text as included in annex III to this report for consideration and discussion at the next meeting.

Article 10 on notification and the provisions concerning public participation (article 4) and the role of environmental authorities (article 13)

11. The Working Group discussed article 10 on notification based on a joint proposal by the European Commission and Norway and another proposal presented by the Norwegian delegation. On the basis of a proposal from a small drafting group led by Switzerland, it was decided to move the new text of article 10 to article 4. It was also decided to move paragraphs 3 and 4 of article 13 to article 4. A number of delegations wanted to delete this article, other delegations wanted to have a differentiated public participation approach either with more flexibility or with more stringent requirements. The Working Group also discussed the option of keeping procedural elements in one article and the content aspects in another article. The delegation of Sweden also drew the attention of the Meeting to other articles relevant to public participation and information and the need to take them into consideration.

12. The Chairman in his summary indicated that there was support for the inclusion of article 10 in article 4, and the inclusion of paragraphs 3 and 4 of article 13 in article 4. However, it had been pointed out that (i) the idea/concept of a notification element (or initial announcement/early information element) originally found in article 10 seemed to have been lost, and that (ii) the remaining paragraphs 1, 3 and, possibly, 5 of article 13 contained elements related to time frames, to the expression of opinion/submission of comments before a decision was taken, and on the publication of arrangements for information and consultation, and thus should not be deleted, but possibly integrated into article 4. He also indicated that some delegations wanted the opportunity to express opinions to apply to the public generally, while others would confine this right to the "public concerned". It was also mentioned that the structure of article 4 was becoming complicated, mixing principles, practical arrangements and guidance on public participation and consultation, while similar elements also appeared in other separate articles. This pointed to the need to restructure the

protocol, as mentioned by several delegations. The Chairman decided to attach to the report the new article 4, for further consideration, and to keep the original article 13 paragraphs 1, 2 and 5, for further consideration. He also concluded that some delegations wished to delete article 10, on the understanding that the new article 4 would cover the provisions. The Bureau, with the assistance of the secretariat, was requested to take these issues into account in the further update of the protocol.

13. The Working Group prepared the new text of article 4 as included in annex IV to this report and decided to keep the current texts of the articles 10 and 13 in square brackets. The delegations of Kazakhstan, Georgia, Tajikistan and Armenia supported the opposition of the delegations of Bulgaria, the Czech Republic, Italy, Poland and other countries to mixing different articles on public participation in one article and deleting articles 10 and 13. The delegations of Kazakhstan and four other newly independent States submitted changes to the new text as included in annex V to this report.

Article 3 on general provisions

14. The delegation of Italy prepared an addition to article 3 on general provisions as included in annex VI to this report.

The references to health throughout the protocol

15. The Working Group, when discussing the issue of including health in the protocol, considered and agreed to annex I to the report of its fourth session. It further decided to delete the definition of public health authorities from the protocol and to replace the wording "environment and environment related health" by "environment, including health" throughout the text of the protocol and its annexes. It also decided to delete from article 2, paragraph 14, the reference to "safety". It requested the Bureau, with the assistance of the secretariat, to take these decisions into account in the further update of the protocol.

The non-substantial articles (preamble and final clauses), the relationship to the Espoo and Arhus Conventions, and the question of compliance

16. Representatives of a small number of delegations (Bulgaria, Georgia, Netherlands, Switzerland, United Kingdom (lead country) and Ecoforum) agreed to look into the preamble and final clauses of the draft protocol, together with the secretariat, in order to present a proposal before the next meeting. They would work preferably by e-mail. They would also look into the relationship to the Espoo and Arhus Conventions, and the question of compliance.

III. CONSIDERATION OF THE REPORT OF THE FOURTH SESSION

17. The delegation of Germany and other delegations provided comments to the report of the fourth session as included in annex VII to the present report and requested the Bureau to take them into account in the further update of the protocol.

IV. OTHER BUSINESS

18. The Commission of the Europe Communities made the following statement. On behalf of the Commission of the European Communities and several of the member States of the European Union, the Chairman was asked to be firm with the delegations and an appeal was made for a more proactive approach by the secretariat in the fulfillment of its role. The Commission repeated its concern for maximum efficiency with regard to the meetings and expressed the need for an official updated and clear draft protocol text. The Chairman reminded the Meeting that it was the responsibility of the Bureau, assisted by the secretariat, to finalize reports and to produce documents and also recalled the limited available resources available within the secretariat for supporting all the activities under the Convention. A plea was made to expand the manpower resources in the secretariat as soon as possible utilizing the funds from the EU Commission and the Netherlands.

19. The Working Group requested the Bureau to prepare before the next meeting (i) further updated version of the protocol, taking into account the decisions taken at the present meeting, (ii) an outline for a revised structure of the protocol, and (iii) draft criteria for screening.

V. CLOSING OF THE FIFTH SESSION

7. In his summing up the Chairman thanked the delegations for a productive session, and reminded them that only two sessions remained. These would be two five-day sessions from 23 to 27 September 2002 in Ohrid, the former Yugoslav Republic of Macedonia, and from 18 to 22 November 2002 in Geneva.

Annex I

Prepared by the Working Group on the basis of a proposal by the delegations of Italy, Poland, the United Kingdom and other delegations

Article [8 and 9]

POLICIES AND LEGAL ACTS/LEGISLATION

1. Each Party shall ensure that environmental, including health, concerns are considered and appropriately integrated in preparing *any of its* proposed policies and legal acts that may have significant effects on the environment.

2. Each Party shall determine the practical arrangements for the application of paragraph 1 within the framework of its national legislation.

[3. When determining the practical arrangements for the application of paragraph 1, each Party shall / *may*, taking into account the nature of the proposed policy or legal act, consider:

- (a) The criteria for screening as indicated in annex X (check list);
- (b) National and international environmental and sustainable development objectives;
- (c) The scope of the assessment and the details of the environmental report;
- (d) The importance of identifying possible alternatives;
- (e) The need *and form* of public participation;
- (f) The need for mitigation measures;
- (g) The guidelines for carrying out strategic environmental assessment for plans, programmes, policies and legislation as included in annex xx.]

4. Each Party may decide not to apply the provision of this article. Such a Party shall, upon ratification of this Protocol, inform the other Parties about this decision.

Annex II
**Proposal by the Commission of the European Communities and the delegations of
Austria, Belgium, Denmark, France, Finland, Germany and Greece**

Articles [8 and 9]

POLICIES AND LEGAL ACTS/LEGISLATION

“To the extent appropriate, the Parties shall endeavour to apply the principles of this Protocol (or alternatively a reference to relevant articles) to legal acts and policies which are likely to have significant effects on the environment. Each Party may decide not to apply the provision of this article. Such a Party shall, upon ratification of this Protocol, inform the other Parties about this decision.”

Annex III

Prepared by the delegations of Belgium, Bulgaria, Estonia, Italy, Netherlands, Norway, Poland, United Kingdom, REC and other delegations

Replace the current text of article 16 by:

ACCESS TO JUSTICE IN RELATION TO SEA FOR PLANS AND PROGRAMMES

1. Each Party shall ensure that members of public concerned may in accordance with national legislation request a review of the [substantive and] procedural legality of decision referred to in articles [7] and [11].

[2. Each Party should endeavour to apply paragraph 1 to policies and legislation.]

Annex IV

Prepared by the Working Group on the basis of a proposal prepared by the delegations of Italy, Poland, Switzerland, United Kingdom, ECOTERRA and other delegations

Revised article 4 integrating revised article 10 and relevant provisions of article 13 [paragraphs 3 and 4]:

Article 4

PUBLIC PARTICIPATION, INFORMATION AND CONSULTATION

1. Each Party shall ensure early, timely and effective public participation, when [all] options are open, in strategic environmental assessment procedures [for plans and programmes.] (Former art. 4, para.1)
2. Each Party, using electronic media or other appropriate means, shall ensure the timely public availability of the draft [legal act,] plan or programme and the environmental report. Each Party shall ensure that the public referred to in paragraph 4 and the authorities referred to paragraph 5 have the opportunity to express their opinion thereon within reasonable time frames. (Former art. 4, para. 2)
3. [[To the extent appropriate,] each Party shall endeavour to provide opportunities for the participation of the public in the screening [and scoping] phase[s] of strategic environmental assessments.] (Former art. 4, para.3)
4. Each Party shall identify the public concerned as defined in article 2, paragraph 13, for the purposes of paragraph 1, including relevant non-governmental organizations. (Former art. 13, para. 4)
5. Each Party shall designate the authorities to be consulted, which, by reason of their specific environmental or health responsibilities, are likely to be concerned by the environmental, including health, implications of implementing the [the legal act,] plan or programme. (Former art. 13, para. 3)
6. Each Party shall determine the detailed arrangements for timely informing and consulting the public referred to in paragraph 4 and each Party shall determine the authorities referred to in paragraph 5. [For this purpose, each Party shall take into account to the extent appropriate the elements listed in annex IIa.] [For this purpose, each Party shall give the information as listed in annex IIa.]
7. [Each Party shall require the competent public authorities to give the public concerned access for examination, free of charge and as soon as it becomes available, to all information relevant to the strategic decision-making procedure referred to in this article that is available at the time of the public participation procedure.] (Former article 4, para.4)

Annex V
**Proposals for revisions to article 4 (as included in annex IV above) by
Kazakhstan and four other newly independent States**

Article 4

PUBLIC PARTICIPATION, INFORMATION AND CONSULTATION

1. Each Party shall ensure early, timely and effective public participation, when [all] options are open, in all stages of strategic environmental assessment procedures where such stages exist. (Former art. 4, para. 1)
2. Each Party, using electronic media or other appropriate means, shall ensure the timely public availability of the draft programme and the environmental report.
3. Each Party shall ensure that the public and the authorities referred to in paragraph 6 have the opportunity to express their opinion thereon within reasonable time frames. (Former art. 4, para. 2)
4. [To the extent appropriate,] the Parties shall endeavour to provide opportunities for the participation of the public in the screening [and scoping] phase[s] of strategic environmental assessment. (Former art. 4, para. 3)
5. Each Party shall identify [~~the public concerned as defined in article 2, paragraph X, for the purposes of paragraph 1, including~~] relevant non-governmental organizations. (Former art. 13, para. 4)
6. Each Party shall designate the authorities to be consulted which, by reason of their specific environmental or health responsibilities, are likely to be concerned by the environmental and health implications of implementing the [legal act,] plan or programme. (Former art. 13, para. 3)
7. The detailed arrangements for informing and consulting the public [~~referred to in paragraph 4~~] and the authorities referred to in paragraph 6 shall be determined by each Party.

[For this purpose, each Party shall take into account to the extent appropriate the elements listed in annex IIa.]

[For this purpose, each Party shall give information as listed in annex IIa.] (Former new art. 10)
8. [Each Party shall require the competent public authorities to give the public [~~concerned~~] access for examination, free of charge and as soon as it becomes available, to all information relevant to the strategic decision-making procedure referred to in this article that is available at the time of the public participation procedure.] (Former art. 4, para. 4)]

Annex VI
Proposal by the delegation of Italy

Article 3

Include in article 3 the following additional paragraph:

GENERAL PROVISIONS

[10. The provisions of this Protocol shall apply without prejudice to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.]

Annex VII

Remarks by the German delegation on the report of the fourth session and on the updated version of the draft

I. REPORT OF THE FOURTH SESSION

1. Paragraph 8 - Health issues:

The report mentions the proposal of the delegation of the Czech Republic to combine "public health experts" and "public health authority". However, several delegations also proposed to delete the definition of "public health authority", because the definition of "public authority" in article 2, paragraph 9, and the principle of article 13, paragraph 3, were sufficient. This proposal is not reflected in the report. The report should contain either proposals or neither.

2. Annex II - Article 4:

The wording "in all stages of SEA where such stages exist" was not part of the written proposal or of any discussion in plenary. It should, therefore, be deleted for the time being.

3. Annex III - Article 7:

Annex III to the report is not fully in line with the discussion and the draft report that was distributed on the last day of the meeting:

(a) The words "during the initiation for the plan and programme" was proposed by the delegation of the Czech Republic, but received no support;

(b) In article 7, paragraph 1, the words "and the public" and "and shall be entitled to make comments" and in article 7, paragraph 2, "and that the comments pursuant to paragraph 1 have been taken into account" were proposed by the delegation of Kazakhstan. However, they received no further support from potential signatories, but were strongly opposed by the Commission of the European Communities and others.

With regard to the rules of procedure (para. 17 of the draft report), the texts in subparagraphs (a) and (b) above do not belong in the annex and should be in the report itself as proposals by the delegation of Kazakhstan (subpara. (b)) and the delegation of the Czech Republic (subpara (a)) that have not received any support from other delegations.

II. UPDATED VERSION OF THE DRAFT

At the fourth session it was decided to put article 11, paragraph 3, in square brackets and add, as an alternative, the text of the new article 4, paragraph 3, in square brackets in the draft of article 11.