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**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 (g) of the provisional agenda)**

REPORT OF THE SMALL GROUP ON AMENDMENTS

1. The small group on amendments met on 16 - 17 June 2003 in Berlin, at the invitation of the Government of Germany, pursuant to a decision taken by the Working Group on Environmental Impact Assessment (EIA) at its fifth meeting (MP.EIA/WG.1/2003/2, para. 25). The meeting was attended by the delegations of France, Germany and the United Kingdom. A representative of the Commission of the European Communities also attended. A representative of the secretariat was also present. The delegations of Norway and the former Yugoslav Republic of Macedonia were unable to attend.
2. The small working group based its discussions on a paper prepared by the secretariat as well as on comments made by the delegations of France, Germany, the United Kingdom and the Commission.
3. The small working group prepared the following proposals for consideration by the Working Group on EIA.

I. FORM OF A POSSIBLE AMENDMENT TO THE CONVENTION

4. The small working group proposed that the possible amendments should take the form of a second amendment to the Convention.

II. REVISION OF APPENDIX I

5. In its discussions the small working group decided to keep the current Appendix as a basis and therefore proposed only an extension of it. To this end, the small working group decided to take into account the relevant activities included in the annexes to the EU directive on EIA (85/337/EEC, as amended by (97/11/EC). It considered that practical evidence showed that there was a need to include the words of the EU directive into Appendix I to the Convention and proposed therefore, that the following amendments should be made to Appendix I:

- (i) Item 2 – replace “other nuclear reactors” by: “other nuclear reactors, including the dismantling or decommissioning of such power stations or reactors 1/” (“1/ Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site”).
- (ii) Item 3 – replace the current text by the following:
 - “3. - Installations for the reprocessing of irradiated nuclear fuel.
 - Installations designed:
 - For the production or enrichment of nuclear fuel;
 - For the processing of irradiated nuclear fuel or high-level radioactive waste;
 - For the final disposal of irradiated nuclear fuel;
 - Solely for the final disposal of radioactive waste; or [as per Protocol]
 - Solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.”
- (iii) Item 7 – add: “Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road, would be 10 km or more in a continuous length.”;
- (iv) Item 8 – replace the current text by the following: “Large-diameter pipelines for the transport of oil, gas or chemicals”;
- (v) Item 10 – add: “Waste disposal installations for the incineration or chemical treatment of non-hazardous waste with a capacity exceeding 100 metric tons per day”;
- (vi) Item 12 – add after “groundwater extraction activities”: “or artificial groundwater recharge schemes” and delete the words “in cases”; add after “abstracted” ; “or recharged”;
- (vii) Item 13 – replace the words “Pulp and paper” by the following: “Pulp, paper and board”;
- (viii) Item 14 – add after “Major”: “quarries.”;
- (ix) Item 15 – add after “offshore hydrocarbon production”: “Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 metric tons/day in the case of petroleum and 500 000 cubic metres/day in the case of gas”;
- (x) Add to Appendix I to the Convention the following activities 18 to 21:
 - 18. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year; and
 - (b) In all other cases, works for the transfer of water resources between river basins where the multi annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 percent of this flow.

- In both cases transfers of piped drinking water are excluded.
- 19. Waste-water treatment plants with a capacity exceeding 150 000 population equivalent;
 - 20. Installations for the intensive rearing of poultry or pigs with more than:
 - 85 000 places for broilers[,] [or] 60 000 places for hens;
 - 3 000 places for production pigs (over 30 kg); or
 - 900 places for sows;
 - 21. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.

The small group considered that the proposals for amendments in item 2, 3, 8, 10, 12, 13, 14, 15 and for the addition of new items 18 to 21 also took into account annex I to the Aarhus Convention.

6. The small working group also considered the proposals made by the delegation of Azerbaijan at the second meeting of the Parties (MP.EIA/2001/16). With respect to the first proposal by Azerbaijan to amend paragraph 8 to read 'Large-diameter (over 500 mm) oil and gas pipelines, including underwater pipelines', the group considered that any threshold should not weaken the application of the Convention and that it was not only the diameter which was important but also the length of the pipeline. The group invited the delegation of Azerbaijan to provide more information on this issue in order to prepare a well-based opinion. The group considered the second proposal by Azerbaijan to amend paragraph 15 to read 'Offshore hydrocarbon production and hydrocarbon in internal transboundary waters' and concluded that more information was necessary. With regard to the third proposal by Azerbaijan to include a new paragraph 18 reading 'Transport of oil and other dangerous goods by seagoing vessels', the group held that this proposal would not fit in the system of Appendix I as environmental impact assessment was an instrument for site-specific activities.

7. The small group was of the opinion that the installation of wind farms was becoming increasingly important and that these wind farms were very often constructed offshore. It considered that these installations might have significant adverse impacts on the environment, particularly related to landscape, tourism and nature conservation. These impacts could also be transboundary. It therefore suggested also adding to Appendix I the following activity: 'major installations for the harnessing of wind power for energy production (wind farms)'.

III. INTRODUCTION OF SCOPING PROCEDURES

8. In discussing this item, the group noted that in a number of countries scoping was not a part of the national EIA legislation. A proposal to introduce a scoping procedure in the Convention would thus affect domestic EIA systems. However, at its meeting in January 2003, the Working Group on EIA had rejected the idea of amendments with the purpose of linking the Convention with domestic EIA. Introducing provisions on scoping could, therefore, be in contradiction with the mandate of the small group.

9. The group recognized that there were both advantages and disadvantages to mandatory scoping procedures and held that a mandatory scoping procedure could lead to additional complications in a transboundary context. It was recognized that scoping could further improve the quality of the EIA documentation and would support the work of the proponent as it was known in advance which type of impacts would be considered in the EIA documentation. Another

advantage could be that it could shorten or speed up the EIA procedure and help decision-making. The group also considered that the transboundary procedure would become longer if the scoping procedure were held at the same time as or before the notification. It was recognized that the national EIA procedures very often had strict time limits in this respect.

10. The small group considered that scoping could be helpful in a transboundary context. A solution to the difficulties mentioned above could therefore be a recommendatory provision in the Convention. For this purpose the small group suggested that the following proposal could be included in the Convention:

- “(a) If the Party of origin carries out a scoping procedure, the affected Party should to the extent appropriate be given the opportunity to participate in this procedure;
- (b) A Party of origin should, at the request of the affected Party, undertake a scoping procedure.”

The group considered that the Working Group would wish to consider carefully the arguments for and against a provision on scoping and, in particular, a mandatory provision, before taking a decision on this issue.

IV. TECHNICAL AMENDMENTS TO ALIGN THE CONVENTION WITH THE PROTOCOL

11. The small group recognized that the Convention did not include a provision whereby protocols to the Convention could be prepared. It recalled that the decision to prepare the Protocol on Strategic Environmental Assessment (SEA) did not lead to major discussions. However, in order to avoid any legal argument in the future that no protocols can be prepared and without casting any doubt on the validity of the Protocol on SEA, the small group proposed to insert a new paragraph 2 (f) in article 11 to read: “Prepare, where appropriate, protocols to this Convention;”, and to renumber the following subparagraph. The small group took also note of article 10, paragraph 2 (e), of the Aarhus Convention.

12. In order to reflect further the possibility of preparing protocols to the Convention, the small group also considered amendments to article 8 and Appendix VI. It proposed to add to article 8 at the end of the first sentence the words “and any protocol adopted under the Convention” and to add to Appendix VI the following new paragraph 3:
“Paragraphs 1 and 2 may be applied, *mutatis mutandis*, to any protocol to the Convention”.

13. The small group also recognized that the Convention did not include an article on the review of compliance and considered this an important issue for inclusion in the Convention. The small group also took note of the first sentence of article 15 of the Aarhus Convention. It therefore proposed to insert a new article 14 bis to read as follows:

“Review of Compliance

The Parties shall review compliance with the provisions of this Convention and, if so decided, any protocol adopted under this Convention on the basis of the compliance procedure, as a non-adversarial and assistance-oriented procedure adopted by the Meeting of the Parties. The review shall be based on regular reporting by the Parties”.

14. The group also considered the differences between the provisions of the Protocol on SEA and the Convention and considered that the following amendments could be made to the Convention in order to align it with the Protocol:

- (i) Replace article 11, subparagraph 2 (c), by: “(c) Seek, where appropriate, the services and cooperation of competent bodies having expertise pertinent to the achievement of the purposes of this Convention;”
- (ii) Add the following new subparagraph to article 11, paragraph 2: “(h) Establish such subsidiary bodies as they consider necessary for the implementation of this Convention;”
- (iii) Add a new sentence at the end of article 14, paragraph 4: “For the purpose of this Convention, the three fourths of the Parties required for an amendment to enter into force for Parties having ratified, approved or accepted it, shall be calculated on the basis of the number of Parties at the time of the adoption of the amendment.”

15. The meeting was closed on 17 June 2003 and all participants thanked the Government of Germany for the excellent arrangements made.