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

Implementation Committee

Nineteenth session

Geneva, 31 August–2 September 2010

Report of the Implementation Committee on its nineteenth session

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I. Introduction

1. The nineteenth session of the Implementation Committee, under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), was held from 31 August to 2 September 2010 in Geneva.

A. Attendance

2. All members of the Implementation Committee attended the session: Ms. Tatiana Javanshir (Azerbaijan), Ms. Nina Stoyanova (Bulgaria), Mr. Nenad Mikulic (Croatia), Mr. Matthias Sauer (Germany), Ms. Rakia Kalygulova (Kyrgyzstan), Mr. Jerzy Jendroska (Poland), Ms. Tatiana Plesco (Republic of Moldova) and Ms. Vesna Kolar-Planinsic (Slovenia).

3. The member nominated by the Republic of Moldova had replaced Ms. Diana Bragoi. Ms. Bragoi had been one of two Vice-Chairs, but the Committee concluded that there was no need to elect a second Vice-Chair for the remaining period until the next session of the Meeting of the Parties.

4. The session was attended by representatives of Romania and Ukraine during the Committee's consideration of the follow-up to decision IV/2 regarding Ukraine (see section II below), following the Committee's agreement to open that agenda item to observers.

5. The Committee recalled the Chair's letters to Azerbaijan regarding the absence of the member nominated by Azerbaijan, Ms. Javanshir, from the previous two sessions, as well as its consideration of this matter in its previous session (ECE/MP.EIA/IC/2010/2, para. 4). The Committee welcomed the presence of Ms. Javanshir in the current session and, following reassurances by Ms. Javanshir that she expected to be present at future sessions, decided not to recommend to the fifth session of the Meeting of the Parties that Azerbaijan be replaced on the Committee.

B. Organizational matters

6. The Chair of the Implementation Committee, Mr. Sauer, opened the session. The Committee adopted its agenda (ECE/MP.EIA/IC/2010/3), which had been prepared by the secretariat in agreement with the Chair.

II. Follow-up to Decision IV/2 regarding Ukraine (paragraphs 7–14)

7. The Committee considered a letter received from Ukraine on 23 July 2010 in response to the Committee's letter requesting further details on the strategy of the Government of Ukraine to implement the Convention. The strategy had been requested by the Meeting of the Parties to the Convention (ECE/MP.EIA/10, decision IV/2, para. 12) and had been adopted by the Cabinet of Ministers of Ukraine on 6 January 2010. The Committee observed that the timing in the strategy, confirmed in the most recent letter from Ukraine, was ambitious. The Committee also noted that its question to Ukraine on the negotiation of bilateral agreements had not been answered in the most recent letter.

8. Mr. Jendroska reported on the conclusion of a European Commission project to assist Ukraine in the implementation of the Espoo Convention and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). He also reported that a follow-up project

might be carried out to assist in implementation of the above-mentioned strategy. The Committee also considered informal reports on progress in negotiating bilateral agreements with some neighbouring States. However, the representative of Romania reported that her Government had written to the Government of Ukraine that it would not proceed with negotiation of a bilateral agreement as long as Ukraine did not fulfil its obligations under the Convention with respect to the Bystroe Canal Project.

9. The Committee recalled the request by the Meeting of the Parties to the Committee to report to the fifth session of the Meeting of the Parties on the Ukrainian strategy and its implementation and to develop, if appropriate, further recommendations to assist Ukraine in complying with its obligations under the Convention (decision IV/2, para. 13). The Committee also recalled the invitation by the Meeting of the Parties to the Government of Ukraine to report to the Committee by the end of 2010 and to the fifth session of the Meeting of the Parties on progress in the elaboration of bilateral agreements, particularly with Romania (decision IV/2, para. 14).

10. The Committee therefore asked the Chair to write again to Ukraine to express its thanks for the most recent letter and to request by 31 December 2010 updated information on:

(a) The status of negotiation of bilateral agreements with neighbouring States, including a list of meetings held with each State for that purpose, specifying the dates and locations of such meetings;

(b) The implementation of the strategy, reporting progress in drafting or adopting legislation referred to in the strategy as well as the planned decree on public participation, and indicating and explaining any changes to the schedule in the strategy.

11. The Committee also asked that the Government of Ukraine attach to its response the following documents:

(a) Any draft bilateral agreements with neighbouring States;

(b) An updated schedule for the strategy, as appropriate;

(c) Copies of any draft or adopted legislation referred to in the strategy.

12. The Committee took note of a letter from the Government of Romania received on 14 June 2010 regarding the Bystroe Canal Project. The Committee recalled that it had decided not to consider this matter further pending a decision by the Meeting of the Parties (ECE/MP.EIA/IC/2009/4, para. 18).

13. The Committee discussed an invitation to the Committee and the secretariat from the European Commission to participate in a planned meeting in Kyiv on the Bystroe Canal Project. The Committee expressed its pleasure that the European Commission was actively involved in finding a solution to the disagreements over the Project. The Committee agreed that any representation of the Committee and Convention secretariat should be to provide information on decisions taken by bodies under the Convention, and should not endorse any outcome or seek to assist directly in finding a solution to the disagreements over the Project; any representatives of the Committee and Convention secretariat should make this position clear at the start of the meeting and it should be communicated to the European Commission in advance. Nonetheless, the Committee supported the participation of the secretariat. Depending on the final date of the meeting and subject to their availability, members of the Committee also expressed a willingness to participate.

III. Follow-up to Decision IV/2 regarding Armenia (paragraphs 15–19)

14. The Committee considered a letter received from the Government of Armenia on 30 July 2010, which was in response to the Committee's letter requesting further details on actions being taken by the Government of Armenia to implement recommendations by the Meeting of the Parties to the Convention (ECE/MP.EIA/10, decision IV/2, paras. 16–19).

15. The Committee took note of a report by the Chair on the successful holding of a seminar on legislation and procedures for the implementation of the Convention in Armenia, held on 17 May 2010 within a meeting of the Working Group on Environmental Impact Assessment, and led by Armenia. The Committee also took note of information provided by the secretariat on:

(a) The expected holding in Georgia in December 2010 of a workshop for the Caucasus subregion, further to the workplan;

(b) The application of the Convention to a proposed nuclear power plant in Armenia, with the secretariat acting as intermediary between the Government of Armenia and the Governments of its neighbouring States.

16. In the light of the above, the Committee asked the Chair to write to the Government of Armenia to request by 31 December 2010 updated information on:

(a) How the legal procedure had progressed with respect to the draft law on environmental impact assessment;

(b) Additional measures being taken by Armenia, including application of the Convention to the proposed nuclear power plant and, as appropriate, participation in the planned workshop in Georgia.

17. The Committee agreed to consider the matter further at its next session and to report to the Meeting of the Parties accordingly.

18. The Committee also asked the Chair to inform the Working Group that the Committee would encourage the holding in the next intersessional period of similar seminars to that led by Armenia in May 2010.

IV. Second review of implementation

19. Mr. Jendroska presented the findings of his review examining the implementation of the provisions of the Convention on public participation. In the light of the presentation, the Committee expressed its opinion that:

(a) A domestic regulatory framework was necessary for implementation of the Convention, especially with respect to public participation;

(b) The organization of public participation under the Convention was the responsibility of the competent authority and not of the proponent. Nevertheless, it might be possible under national systems that the competent authority and the proponent would organize the public participation together. However, the proponent should not be responsible for public participation without the competent authority;

(c) The concerned Parties had a common responsibility for providing equivalent opportunities for public participation in the affected Party, including accurate and effective notification of the public. In that context, while recognizing the lack of administrative powers of the Party of origin's competent authority on the territory of the affected Party, at

a minimum it had to provide the possibility for the public of the affected Party to participate in the procedure of the Party of origin (ECE/MP.EIA/IC/2010/2, para. 37). The Party of origin's competent authority should furthermore support the affected Party's competent authority in providing effective participation for the public of the affected Party in the procedure for transboundary environmental impact assessment;

(d) Synergies should be sought with national reporting on implementation of article 6 of the Aarhus Convention (on public participation), given that the corresponding field of application and the membership of the Espoo and Aarhus Conventions, respectively, were each almost identical under the two treaties;

(e) When revising further the questionnaire on the implementation of the Convention, particular attention should be given to addressing the above-mentioned issues and to ensuring that Parties identified relevant legal provisions when asked to do so, rather than indicating their practical experience, and while noting that public hearings were not the only means of assuring public participation under the Convention;

(f) Bilateral agreements could resolve many issues relating to public participation, as foreseen by the Convention. Issues to be addressed in bilateral agreements might be elaborated in updated guidance on elements to be raised in bilateral agreements.

20. Further, and recalling an earlier opinion on the necessary translation of documentation (ECE/MP.EIA/IC/2010/2, para 35), the Committee was of the opinion that during the procedure for transboundary environmental impact assessment the concerned Parties should share the responsibility for ensuring that the opportunity provided to the public of the affected Party was equivalent to that provided to the public of the Party of origin, including access to at least relevant parts of the documentation in the appropriate language of the affected Party. That was in addition to their responsibility to provide the possibility of access to the full and final environmental impact assessment documentation in the original language or languages, until the procedure ended and no earlier than when the final decision had been provided to the public in the affected Party. Further, copyright protection should not be considered as allowing for the prevention of the public availability of the full environmental impact assessment documentation.

21. More generally, the Committee recalled that Mr. Jendroska's work concluded the Committee's examination of general compliance issues in the second review of implementation. The Committee considered that, when examining general compliance issues in the third review of implementation, the Committee should report on progress with respect to the second review of implementation.

V. Submissions

22. No submissions had been received since the Committee's previous session and there were no earlier submissions still under consideration.

VI. Committee initiative

23. The discussion held under the agenda item on Committee initiative had not been open to observers, in accordance with rule 17 of the Committee's operating rules.

A. Azerbaijan

24. The Committee noted that the Government of Azerbaijan had not responded to the Chair's letter of 16 March 2010 requesting the Government to contact the secretariat to

complete the practical arrangements for the provision of technical advice. On the basis of information provided by the member nominated by Azerbaijan, including regarding ongoing revision of the environmental legislation of Azerbaijan, the Committee decided not to take further steps but to await the response from Azerbaijan, which was to arrive by the end of September 2010.

B. Slovakia

25. The Committee considered a letter received from the Government of Slovakia on 24 May 2010 in response to the Committee's letter requesting further clarification on how Slovakia had furnished Ukraine with environmental impact assessment documentation. That correspondence was further to information provided by Ukraine and the secretariat regarding a proposed activity in Slovakia. The Committee also recalled that the environmental impact assessment documentation had eventually been received by Ukraine in October 2009, as confirmed in an attachment in a letter from Ukraine on 28 December 2009.

26. The Committee decided not to begin a Committee initiative further to the information provided as there was insufficient evidence of non-compliance. Nonetheless, the Committee made several observations and recommendations of a general nature, and asked that those also be communicated to the concerned Parties.

27. If, on the one hand, the Party of origin sent a notification to the point of contact in the affected Party and could prove that it had done so and, on the other hand, the affected Party did not initially receive the notification, there was no need for the Party of origin to send the notification again provided that:

(a) The Party of origin accepted the participation of the affected Party in the transboundary EIA procedure;

(b) The affected Party received all information provided for in article 3, paragraphs 2 and 5, of the Convention, as well as the environmental impact assessment documentation.

28. The affected Party could not impose conditions on the notification beyond those provided in the Convention unless provided in a bilateral agreement or other arrangement between the concerned Parties.

29. A bilateral agreement could be an effective mechanism to address communication between concerned Parties and the sending of information.

30. If a Party of origin was uncertain of the means of communication with an affected Party, it should send information both by post and through diplomatic channels, and use e-mail or any other appropriate communication to verify receipt.

31. If a Party failed to provide correct and up-to-date contact details of its point of contact and focal point to the secretariat and, as appropriate, the Party of origin, in an ongoing procedure, the Party of origin in ongoing and new procedures could not be held responsible for a failure to provide information to that Party in accordance with the Convention. Changes to the point of contact or the focal point should be communicated immediately.

32. The Committee asked the Chair to write to the Government of Slovakia to inform it of the Committee's deliberations, with a copy to be sent to the Government of Ukraine. The Committee decided to ask whether the secretariat might publish the exchange of communications on this issue on the Convention's website; if there was no reply by 31 December 2010, the Committee would understand that Slovakia agreed to publication.

33. The Committee asked the secretariat to contact the Government of Ukraine through various channels to request updated information on Ukraine's focal point and point of contact.

C. Belarus

34. The Committee considered a reply from the Government of Belarus received on 22 July 2010 in response to its letter, further to information provided by a Ukrainian non-governmental organization, Ecoclub, regarding a proposed activity in Belarus close to the border with Lithuania. The Committee also considered a letter from Lithuania received on 26 August 2010 regarding the procedure for transboundary environmental impact assessment for the proposed activity.

35. In the light of the above, the Committee asked the Chair to write to the Government of Belarus to request the following information by 31 December 2010:

(a) How the final environmental impact assessment documentation differed from the preliminary environmental impact assessment documentation provided to the affected Parties;

(b) Whether or not the full environmental impact assessment documentation had been or would be made available to the affected Parties and an opportunity provided for the authorities and the public of the affected Parties to comment on the final environmental impact assessment documentation, and whether or not such comments would then be taken into due account in the final decision on the proposed activity;

(c) How the final decision, including the full environmental impact assessment documentation, had been or would be made available to the affected Parties;

(d) The relevance of the following legislation to the procedure for transboundary environmental impact assessment:

(i) Law of the Republic of Belarus on Use of Atomic Energy of 30 July 2008 (no. 426-W);

(ii) Regulations on the discussion of issues in the field of atomic energy with the participation of public associations, other organizations and citizens, approved by a decision of the Council of Ministers on 4 May 2009 (no. 571).

36. The Committee asked that the Chair also write to the Government of Lithuania to inform it of the above, to inform it that its letter of 26 August had been treated as background information, and to ask whether the Government of Lithuania believed that the legal, administrative and other measures taken by Belarus were insufficient for proper implementation of the Convention. The Committee also wished to point out that the Committee initiative procedure was not available to Parties to the Convention having concerns about other Parties' compliance with the Convention. Instead, a Party having such concerns might make a submission to the Committee and, where such concerns related to the application of the Convention to a particular proposed activity, the submission should only be made once the final decision on the activity had been taken.

37. The Committee requested the secretariat to inform Ecoclub of the above by e-mail.

D. Republic of Moldova

38. The Committee considered a reply from the Government of the Republic of Moldova received on 16 August 2010 in response to its letter, further to information

provided by the secretariat regarding a proposed activity in the Republic of Moldova close to the borders with Romania and Ukraine. The member of the Committee nominated by the Republic of Moldova (Ms. Plesco) left the room in accordance with rule 17 of the operating rules of the Committee. The Committee decided to seek further clarification and asked the Chair to write to the Government of the Republic of Moldova, copied to Romania, to request the following information by 31 December 2010:

(a) The date when construction of the oil terminal had resumed after a pause of several years, and the date when the oil terminal had been completed;

(b) The final decision taken on the oil terminal, as well as whether due account had been taken of the comments of the affected Parties in the final decision, and whether the final decision had been provided to the affected Parties and when and by what means;

(c) The final decision taken on the passenger and dry-good terminals, as well as whether due account had been taken of the comments of the affected Parties in the final decision, and whether the final decision had been provided to the affected Parties and when and by what means;

(d) How the competent authority had concluded that the branch railway line was not a major change to the existing railway network in the Republic of Moldova, and whether or not it was likely to have a significant adverse transboundary impact.

39. The Committee also expressed its pleasure that the Republic of Moldova was willing to carry out a post-project analysis, and presumed that the Committee might share that information with Romania.

VII. Third review of implementation

40. The Chair presented the status of reporting by Parties on their implementation of the Convention during the period 2006–2009, noting that only 30 of the 44 Parties had completed and returned the questionnaire by 31 August 2010. The Committee asked the secretariat to write to the focal points in those Parties that had not reported on their implementation, informing them that the Committee took note of their failure to report, recalled its earlier conclusion that a failure to report might be considered an issue of non-compliance and urged all Parties to complete and return the questionnaire immediately for processing.

41. The Committee also advised the secretariat not to process completed questionnaires after 31 December 2010.

42. The secretariat presented a first, but incomplete, draft of the third review of implementation, noting both a lack of staff and financial resources to prepare the review and difficulties in limiting the document to the allowed number of words (8,500) and in meeting the deadline for submission of the draft in time for the meeting of the Working Group in November 2010. The Committee made a number of proposals for shortening the document while also asking that, when eventually published, the questions in the questionnaire be included in the review as titles.

VIII. Structure, functions and operating rules

43. 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 had gained (decision IV/2, para. 6). The Committee examined an informal document prepared by the secretariat presenting an amendment to rule 16 of the operating

rules, which provided for the publication of documents and information, to enable the early release of non-confidential information. Having amended the proposal, the Committee agreed that it be included in the draft decision on the review of compliance, to be made available to the Working Group at its next meeting.

IX. Preparations for the fifth session of the Meeting of the Parties

44. The Committee took note of a draft, prepared by the secretariat, of the report on the activities of the Committee, to be put before the Meeting of the Parties, as foreseen in the workplan. The Committee proposed a number of revisions and asked that a revised version be provided to the Committee members for them to comment on individually until 15 November 2010. Thereafter, the secretariat should prepare a further revised version for consideration by the Committee at its next session.

45. The Committee requested the secretariat to provide an updated summary of the opinions of the Committee for consideration at its next session and to make it available on the website of the Convention.

46. The Committee took note of a draft, prepared by the secretariat, of a decision on the review of compliance that was to be considered at the fifth session of the Meeting of the Parties. The Committee proposed a number of revisions and asked that a revised version be provided to the Committee members for them to comment on individually until 15 October 2010. Thereafter, the secretariat should prepare a further revised version to be made available to the Working Group, for its information, at its meeting in November 2010 and for consideration by the Committee at its next session.

X. Other business

47. Ms. Kolar-Planinsic (Slovenia) provided procedural information related to proposed liquefied natural gas terminals in Italy, including Slovenia's discussion with Italy and the European Commission.

48. The Committee agreed that the Chair seek confirmation from the European Commission of the Commission's previous view that a member State of the European Union having concerns about another member State's compliance with its obligations under the Convention might make a submission to the Committee.

XI. Presentation of the main decisions taken and closing of the meeting

49. The Committee decided that it was not necessary to meet in October 2010. The Committee therefore decided to hold its final session of the current composition of the Committee from 11 to 13 January 2011. Should an additional session be required, it could be held from 15 to 17 March 2011.

50. The Committee adopted the draft report of its session, prepared with the support of the secretariat. The Chair closed the session on Thursday, 2 September 2010.