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## Economic Commission for Europe

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

### Implementation Committee

**Twentieth session**

Geneva, 11–13 January 2011

## Report of the Implementation Committee on its twentieth session

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## **I. Introduction**

1. The twentieth session of the Implementation Committee, under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), was held from 11 to 13 January 2011 in Geneva.

### **A. Attendance**

2. All members of the Implementation Committee attended the session: Ms. T. Javanshir (Azerbaijan), Ms. N. Stoyanova (Bulgaria), Mr. N. Mikulic (Croatia), Mr. M. Sauer (Germany), Ms. R. Kalygulova (Kyrgyzstan), Mr. J. Jendroska (Poland), Ms. T. Plesco (Republic of Moldova) and Ms. V. Kolar-Planinsic (Slovenia).

3. The session was attended by representatives of Azerbaijan, Romania and Ukraine during the Committee's consideration of the follow-up to decision IV/2 of the Meeting of the Parties to the Convention regarding Ukraine (see section II below), following the Committee's agreement to open that agenda item to observers. A representative of Romania was also present during the Committee's consideration of its preparations for the fifth session of the Meeting of the Parties to the Convention (section VIII below).

### **B. Organizational matters**

4. The Chair of the Implementation Committee, Mr. Sauer, opened the session. The Committee adopted its agenda (ECE/MP.EIA/IC/2011/1), which had been prepared by the secretariat in agreement with the Chair.

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

5. The Committee considered a report received from Ukraine on 30 December 2010 in response to the Committee's letter requesting further details on the strategy of the Government of Ukraine to implement the Convention, and further to decision IV/2 (ECE/MP.EIA/10). The strategy had been requested by the Meeting of the Parties to the Convention (decision IV/2, para. 12), and had been adopted by the Cabinet of Ministers of Ukraine on 6 January 2010. The Committee was pleased to receive Ukraine's report and took note of its content, which included:

(a) A cabinet order revising the dates in the strategy;

(b) A decree revising the list of central executive bodies and other authorities responsible for fulfilment of the commitments arising out of Ukraine's membership in international organizations;

(c) Other legislation at the draft and outline stage.

6. The Committee was also pleased to receive information on steps taken by the Government of Ukraine to negotiate bilateral agreements with neighbouring Parties.

7. The representative of Ukraine, present as an observer, informed the Committee that the Government of Ukraine had needed to postpone implementation of the strategy because of administrative reform in Ukraine leading to a need for broader consultation on draft legislation. However, he expected the strategy to proceed in a more productive manner in the future.

8. The Committee was concerned that the implementation of the strategy might be a lengthy procedure, with the revised dates for implementation extending to February 2012. It requested to see the latest version of the strategy, with the revisions incorporated. The Committee also considered it important that Ukraine provide a legal framework for public participation in environmental impact assessment (EIA) in general, not limited to the transboundary context, as that was necessary to satisfy the requirements of the Convention (art. 3, para. 8, and art. 4, para. 2), and therefore requested to be informed about the progress with adopting the planned decree on public participation. The Committee also requested to be informed what would be the screening mechanism for determining a likely significant adverse transboundary impact (art. 3, para. 1). Further, the Committee required clarification of the appendix to a draft decree on the list of activities and objects with increased ecological hazard, as the criteria set out in the appendix appeared inconsistent with the list itself.

9. The Committee therefore asked the Chair to write again to Ukraine to express its thanks for the most recent report, to request by 28 February 2011 a response to the Committee's questions and requests above and to indicate that the Committee might have further questions and requests. The Committee also decided to remind the Government of Ukraine that it would be important for it to submit information at the fifth session of the Meeting of the Parties on steps taken by Ukraine to bring it into compliance with the Convention, in particular concrete legal steps already taken, including the entry into force of legislation, and to provide a clear indication of when the strategy would be implemented in full. In addition, the Government of Ukraine had been requested by the Meeting of the Parties to report to it on progress with the elaboration of bilateral agreements or other arrangements.

10. The Committee examined a letter from the Government of Romania to the Government of Ukraine, dated 8 March 2010, in which Romania indicated 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. The Committee urged the Government of Romania to reconsider its opposition to the negotiation of such an agreement. The Committee asked the secretariat to draw the attention of the focal point of Romania to that request.

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

11. The Committee considered a message received from the Government of Armenia on 13 December 2010, which was in response to the Committee's letter requesting additional information on actions being taken by the Government to implement recommendations by the Meeting of the Parties. The Committee decided to amend the draft decision on the review of compliance, to be considered by the fifth session of the Meeting of the Parties, to provide for alternative possible wording, depending on whether Armenia had finalized the adoption of the requested revision of its legislation on EIA.

12. The Committee asked the Chair to write again to Armenia to request that an official copy of the revised legislation be provided to the Committee, once adopted. If the copy was provided in advance of the fifth session of the Meeting of the Parties, the Chair would inform the Meeting of the Parties accordingly.

13. The Committee took note of the information provided by Armenia and the secretariat regarding the application of the Convention to a planned nuclear power plant in Armenia, and regarding the proposed holding of a subregional workshop in Tbilisi in 2011.

## **IV. Submissions**

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

## **V. Committee initiative**

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

### **A. Azerbaijan**

16. The Committee took note of information provided by the secretariat regarding the agreement by the Government of Azerbaijan to a project, under the Environment and Security Initiative, to implement proposed technical advice to Azerbaijan through the Organization for Security and Cooperation in Europe. Therefore, the Committee considered that a written response to the Chair's letter of 16 March 2010 on that matter was no longer required.

17. The Committee also took note of the second Environmental Performance Review of Azerbaijan (ECE/CEP/158), and encouraged Azerbaijan to implement its recommendations with respect to EIA and strategic environmental assessment.

### **B. Belarus**

18. The Committee considered a reply from the Government of Belarus received on 31 December 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 was concerned that the supplied preliminary and final EIA documentation differed significantly. The Committee observed that that might be a reflection of a more general systemic inconsistency between the Convention and environmental assessment within the framework of State ecological expertise systems.

19. The Committee therefore wished to discuss the issue further with Belarus, possibly in a short Committee session immediately preceding the fifth session of the Meeting of the Parties, to be held in Geneva from 20 to 23 June 2011.

20. The Committee also recommended that Belarus provide the final EIA documentation to the affected Parties, and allow an adequate period for them to submit further comments, before proceeding with the final decision on the proposed activity.

21. The Committee asked the Chair to propose to the Bureau the amendment of draft decisions, being prepared for consideration by the Meeting of the Parties, to foresee in the workplan the development of general guidance on resolving a possible systemic inconsistency between the Convention and environmental assessment within the framework of State ecological expertise systems. The guidance might be developed within the planned sub-activity on country-specific performance reviews.

22. The Committee therefore asked the Chair to write to the Government of Belarus, informing it of the above and requesting confirmation by 28 February 2011 of the participation of Belarus in a possible Committee session in June 2011. The Committee requested the secretariat to inform Ecoclub of the above by e-mail.

### **C. Republic of Moldova**

23. The Committee considered a reply from the Government of the Republic of Moldova received on 10 January 2011 in response to its letter, further to information provided by the secretariat regarding development of Giurgiulesti Port 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.

24. The Committee decided not to begin a Committee initiative as there was insufficient evidence of non-compliance. The Committee considered, among other issues, that the railway extension for the port was not subject to the Convention.

25. The Committee asked the Chair to write to the Government of the Republic of Moldova to inform it of the Committee's deliberations. The Committee decided to ask whether the secretariat might publish the exchange of communications on that issue on the Convention's website; if there was no reply by 30 April 2011, the Committee would understand that the Republic of Moldova agreed to publication.

### **D. General observations**

26. In the light of the above deliberations the Committee made two observations of a general nature:

(a) Parties should consider measures to recognize a limit on the period of validity of an EIA procedure before construction begins, and that resuming construction works after an extended time interruption in construction might be considered a major change and could therefore be subject to a new transboundary EIA procedure. The Committee recalled its earlier observation on the validity of the EIA with respect to a hydropower plant in Ukraine (ECE/MP.EIA/IC/2009/4, para. 46);

(b) Parties should consider whether a planned railway line is an extension to a long-distance railway network and could be considered to be a major change to that network, and then whether it might have a significant adverse transboundary impact.

## **VI. Third review of implementation**

27. The Committee was pleased that almost all Parties that were Parties to the Convention in the period from 2006 to 2009 had submitted completed questionnaires on their implementation of the Convention during that period. The Committee took note that only Albania and Serbia had not responded by the deadline of 31 December 2010, and that Serbia had submitted a completed questionnaire on 11 January 2011.

28. The Committee therefore asked the Chair to write to the Government of Albania, indicating that the Committee would bring Albania's failure to report to the attention of the Meeting of the Parties at its fifth session, and urging Albania to submit the completed questionnaire. The Committee would later consider whether Albania's failure to report was an issue of non-compliance with the Convention.

29. The Committee also advised the secretariat to process all the completed questionnaires that it had received to date.

## **VII. Structure, functions and operating rules**

30. The Committee considered a suggestion made during the fourteenth meeting of the Working Group on Environmental Impact Assessment, that the Committee's proposed amendment to operating rule 16 be shortened, but concluded that that would not clarify the meaning of the revised rule and therefore did not follow the suggestion. Furthermore, the Committee decided to add a paragraph to the revised rule clarifying that any progress report from a Party requested by the Meeting of the Parties or by the Committee should be made available to the public.

## **VIII. Preparations for the fifth session of the Meeting of the Parties**

31. The Committee welcomed the publication on the Convention's website of the updated listing of the opinions of the Implementation Committee.

32. The Chair reported on the consideration, by the third session of Meeting of the Signatories to the Convention's Protocol on Strategic Environmental Assessment and the fourteenth meeting of the Working Group on EIA, of compliance and implementation matters under the Protocol and Convention, respectively.

33. The Committee then reviewed the draft report on its activities to be submitted to the fifth session of the Meeting of the Parties. The Committee asked the secretariat to revise the draft report in the light of the Committee's comments, and to include outcomes of the current session, and subsequently to circulate the revised draft report for comments by Committee members during February 2011. The secretariat would then revise the report once again and forward it to the Meeting of the Parties.

34. The Committee also reviewed the draft decision on the review of compliance, to be considered by the fifth session of the Meeting of the Parties. It considered, among other things, a number of suggestions by the Working Group and then agreed revisions to the draft decision. The Committee asked that a revised version be provided to the Committee members for them to comment on individually during February 2011. Any substantial changes would need to be agreed by the Committee in line with operating rule 19 on decision-making by electronic means. The secretariat would then revise the draft decision once again and forward it to the Meeting of the Parties.

## **IX. Other business**

35. The Chair informed the Committee that he had not received a response from the European Commission to his request for confirmation of the Commission's previous view that European Union (EU) law did not preclude an EU member State, having concerns about another EU member State's compliance with its obligations under the Convention, from making a submission to the Committee.

36. The Committee asked the Chair to write to the Directorate-General for the Environment of the European Commission, with a copy to the head of the Commission's legal service, seeking clarification on that matter. The Chair should make reference to article 14 bis on the review of compliance, included in the second amendment to the Convention (decision III/7, ECE/MP.EIA/6), noting that the EU had approved the amendment.

37. The secretariat informed the Committee of the planned holding of a workshop on promoting the application of the principles of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

(Aarhus Convention) in international forums, including an item on the environmental agreements under the Economic Commission for Europe. That led to a discussion on the role of international financial institutions in promoting the implementation of the Espoo Convention, and on the applicability of a checklist for financial institutions on projects with transboundary impacts. The checklist had been prepared by the European Bank for Reconstruction and Development under the current workplan for the Convention. The Committee asked the Chair to propose to the Bureau that, when reviewing the draft decisions for consideration by the Meeting of the Parties, it consider the inclusion of a request to the secretariat to promote the use of the checklist by other international financial institutions.

## **X. Presentation of the main decisions taken and closing of the meeting**

38. The Committee decided that it was not necessary to meet in March 2011. However, it wished to meet briefly on 20 June 2011, at the start of fifth session of the Meeting of the Parties, and asked the secretariat in consultation with the Bureau to investigate the possibility of the holding of a session on that date. The Committee, with new members elected by the Meeting of the Parties, would meet again from 5 to 7 September and from 6 to 8 December 2011.

39. The Committee adopted the draft report of its session, prepared with the support of the secretariat. The Chair closed the session on Thursday, 13 January 2011.