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Economic Commission for Europe

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

Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment

Working Group on Environmental Impact Assessment and Strategic Environmental Assessment

Twelfth meeting
Geneva, 13-15 June 2023
Item 7 of the provisional agenda
Management, coordination and visibility of intersessional activities

Procedural matters of relevance to meetings with remote participation due to extraordinary circumstances

Note by the Bureau

Summary

The present document contains a revised version of the informal note on procedural matters of relevance to meetings with remote participation due to extraordinary circumstances, which the Bureau initially prepared for the last sessions of the Meetings of the Parties (Vilnius (online), 8-11 December 2020), with the secretariat's support, in consultation with the Treaty Section of the United Nations Office of Legal Affairs. [1] The Meetings of the Parties included in the workplan for 2021–2023 a possible further clarification of procedural matters of relevance to meetings with remote participation.[2]

At its last meeting (Geneva, 22-23 February 2023), the Bureau agreed on revisions to the note from the European Union and its Member States, and requested the secretariat to submit them for consideration by the Working Group at its twelfth meeting. For ease of reference, the revisions are presented in a track changes mode

The Bureau recommended that the version to be agreed by the Working Group would be applied, and, as needed, further adapted, should extraordinary circumstances arise again. It agreed that the procedural note should not be tabled for the next sessions of the Meetings of the Parties (Geneva, 12–15 December 2023), which will take place in-person in accordance with the applicable rules of procedure as adopted by the Meeting of the Parties

[1] Available at: https://unece.org/environmental-policy/events/meeting-parties-espoo-convention-8th-session-and-meeting-parties (under the tab "informal documents").
[2] ECE/MP.EIA/30-ECE/MP.EIA/SEA/13 (available at: https://unece.org/sites/default/files/2021-06/ece_mp.eia_30-ece_mp.eia_sea_13_e.pdf), paragraph 8.

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to the Convention at its first session (Oslo, 18–20 May 1998), and as amended in 2011 to extend their application to the Meeting of the Parties to the Protocol.[3]

The Bureau also agreed that since the procedural note in question applied only to extraordinary circumstances, any broader revision concerning the general format of the sessions of the Meetings of the Parties and their subsidiary bodies, or any other procedural aspect of their functioning, in general, would require: (a) A mandate from the Meetings of the Parties to revise the applicable rules of procedure; (b) A clarification on the resource (financial and staffing) implications of such a revision and the appropriate allocation of resources.

As recommended by the Bureau, the Working Group is invited to agree on a revised version of the procedural note and recommend to the Meetings of the Parties that said version be applied, and, as needed, further adopted should the extraordinary circumstances arise again.

[3] Available at: https://unece.org/environment-policyenvironmental-assessment/meeting-parties-convention

I. Introduction

1. Since March 2020, the coronavirus disease (COVID-19)-related infection control measures and travel restrictions have prevented or limited physical participation of delegations at intergovernmental meetings.

2. In these extraordinary circumstances, contracting Parties to various global and regional legal instruments and work programmes under the umbrella of the United Nations have chosen different approaches for delivering on their respective mandates. In accordance with their prerogative as contracting Parties, Parties to all the multilateral environmental agreements under the auspices of the United Nations Economic Commission for Europe (ECE) have proceeded - and/or intend to proceed - with their scheduled key formal meetings and to take decisions either in a "virtual mode", where Parties are participating remotely and online or in a meeting of a "hybrid mode" that allows for participation in-person or remotely through virtual means.[4]

3. Since March 2020, representatives of Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Protocol on Strategic Environmental Assessment have held formal meetings as follows:

(a) The Implementation Committee, at its forty-seventh and forty-eighth sessions (16–19 March and 1–4 September 2020, respectively) held its meetings in a "virtual/ mode". The Committee finalized draft decisions on the review of compliance with the Convention and the Protocol to be considered by the Meetings of the Parties, and agreed on further steps on cases pending before it;

(b) The eighth meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 24–26 August 2020) was held in a "hybrid mode". At the meeting, Parties agreed on the provisional agenda and other draft documents to be considered at the eighth session of the Meeting of the Parties to the Convention and the fourth session of the Meeting of the Parties to its Protocol, respectively, (Vilnius, 8–11 December 2020). In addition, Parties agreed on the time schedule for finalizing and commenting the documents, for registering to the sessions and for submitting information to the secretariat in advance of the sessions (e.g. nominations of officers to be elected to the treaty bodies; financial pledges to the trust fund for the period 2021–2023; applications for financial support; credentials). Lastly, the secretariat, as needed, in consultation with the Bureau, was mandated to process the official documents, send out official invitation letters, prepare the agreed informal documents, organize a high-level anniversary event of the Convention, and oversee the practical preparations in cooperation with the host country. The sessions were first foreseen to be held in a "hybrid" mode allowing for participation either in person or remotely. However, in view of the rapid acceleration of the incidence of new COVID-19 cases and, as of early November, the ban of public meetings

[4] In the second half of 2020, due to COVID-19, under the ECE Convention on Long-range Transboundary Air Pollution, decisions by its governing and the subsidiary bodies were/will be taken in a virtual or a hybrid mode: the Working Group on Effects and the EMEP Steering Committee held a joint virtual session (14–17 September 2020), and the Working Group on Strategies and Review as well as the Executive Body will both hold hybrid sessions (14, 15 and 17 December and on 18 December 2020, respectively); the 58th meeting of the Working Group of Parties to the ECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) was split into two: due to the unavailability of interpretation for the originally scheduled meeting dates of 1–3 July, only informal exchanges were then possible, with the formal meeting with decision-making postponed to a hybrid meeting of 28 and29 October 2020; the Conference of the Parties to the ECE Convention on Transboundary Effects of Industrial Accidents will meet in a hybrid mode on 7–9 December 2020 to take decisions; formal meetings were/will be hybrid or virtual also under the ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (the Water Convention), including the meeting of the Working Group on Integrated Water Resources Management (30 September–2 October 2020), the meetings of its Implementation Committee (2 November and 7–8 December 2020). An overview of practice in the conduct of official meetings during COVID-19 is being prepared by the ECE Environment Division and will be made available in advance of the Meetings of the Parties sessions for information.

in Lithuania preventing any in-person participation at the sessions, the sessions will be held fully virtually.

4. The United Nations, including ECE, does not impose any legal rules or regulations on international treaties under its auspices that would limit the prerogative of the contracting Parties to these treaties to take decisions in their respective formal meetings in extraordinary circumstances in a partially or fully online/virtual mode.

5. In contrast, budgetary or administrative reasons have prevented or seriously limited the ability of the United Nations' secretariat in Geneva to host and service formal meetings in the Palais des Nations, and, in particular, to provide simultaneous interpretation for meetings with remote participation in the official languages of ECE (English, French and Russian), at least for the full duration of the meetings and/or to avail meeting premises that are duly equipped for the use of online interpretation platforms. In 2020, due to the combined effects of COVID-19, the liquidity crisis of the United Nations and the major refurbishment works of the Palais des Nations, the United Nations' Geneva Office has faced unprecedented circumstances resulting into the need to cancel or severely limit meeting activities at its premises. As of the fourth quarter of 2020, only a small number of priority meetings could be accommodated in the Palais des Nations in a considerably reduced format, with a maximum of two to four hours a day of interpretation for meetings with remote participation to be covered through the United Nations regular budget. Until further notice, longer meetings with remote participation cannot be held in Geneva, or, at least, unless additional human resources from the substantive secretariats and extrabudgetary funding through voluntary contributions were made available. The upcoming sessions of the Meetings of the Parties are not subject to the above described limitations, since the related organizational costs, including interpretation via an online platform, are covered by the Government of Lithuania.

6. The rules of procedure of the Meetings of the Parties to the Convention,[5] which apply, mutatis mutandis, to the Meeting of the Parties to the Protocol, also apply to the meetings of their subsidiary bodies.[6] These rules of procedure are silent on remote participation in meetings.

7. Consequently, in advance of the next sessions of the Meetings of the Parties, and in any similar future exceptional case of a pandemic or other extraordinary circumstance preventing or limiting Parties from being physically present in formal meetings, the present document aims to:

(a) Clarify how the proceedings will be undertaken, with a view to facilitating remote participation and decision-making due to extraordinary circumstances, in accordance with the rules of procedure;

(b) Facilitate the implementation of the decisions taken by Parties through the subsidiary bodies to the Meetings of the Parties regarding the upcoming sessions of the Meeting of the Parties (in advance of the sessions of the Meetings of the Parties) and to ensure consistency with the established practices of the Meetings of the Parties of the Convention and its Protocol.

8. The document takes into consideration good practices and procedures developed by other United Nations intergovernmental bodies during this period, including the conferences and meetings of Parties of other multilateral environmental treaties serviced by ECE. In particular, it draws from a document prepared after the outbreak of COVID-19 under the Convention on the Transboundary Effects of Industrial Accidents "Draft operating procedures to facilitate remote participation and decision-making in meetings of the Conference of the Parties due to extraordinary circumstances" (ECE/CP.TEIA/2020/11).[7]

[5] See ECE/MP.EIA/2, annex I, as amended by decisions VI/1 (ECE/MP.EIA/15) and I/1 (ECE/MP.EIA/SEA/2). Available at: www.unece.org/index.php?id=48692 .

[6] The modus operandi of the Implementation Committee is set out in its structure and functions and procedures for review of compliance (decision III/2 as amended by decision VI/2) and operating rules (decisions VI/2, annex IV, and VI/2), available at: www.unece.org/env/eia/implementation/implementation_committee.html .

[7] Available at: www.unece.org/index.php?id=53220.

The United Nations Office of Legal Affairs was consulted on the document and has cleared its contents.

9. As the rules of procedure of the Meetings of the Parties continue to apply at the eighth session of the Meeting of the Parties to the Convention and the fourth session of the Meeting of the Parties to its Protocol, their contents are not extensively replicated in the present document. The sections below provide clarification on the applicable rules owing to the extraordinary circumstances that limit in-person participation.

II. Procedural matters of relevance for meetings with remote participation

A. Terminology

10. For the purposes of the present document:

(a) "In-person or physical participation" means being physically present in one meeting room. In case of travel restrictions related to extraordinary circumstances, a Party has also the possibility to ensure in-person participation of its delegation through the representation of the relevant State (or regional economic integration organization) in the State hosting the meeting (or, if the meeting is held in the Palais des Nations, through the permanent missions of countries (and the European Union) to the United Nations and other International Organizations in Geneva);

(b) "Remote, online or virtual participation" means participation in meetings through an Internet (or, in some cases, telephone)[8] connection to the online meeting platform, whereby representatives can remotely hear other participants and address the meeting;

(c) "Meeting with remote participation" means a session of the Meeting of the Parties to the Convention and a session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol convened in accordance with article 11 of the Convention and article 14 of the Protocol, or a formal meeting of their subsidiary bodies[9], that are held either as a "hybrid" meeting, with the option of in-person or remote participation, or as a fully online/virtual meeting;

(d) "Official document" means a United Nations document submitted by the secretariat of the organization for consideration of the Meetings of the Parties or their subsidiary bodies in response to a formal request, or mandate, from the body concerned in relation to a specific item on the agenda of its formal meeting. To ensure the timely issuance of the documents in the official languages, the workload capacity of all the United Nations services concerned must be planned through forecasting the documents at least six-months in advance of the meeting at which they are to be discussed. The official documents must be submitted for translation by the United Nations services 10 weeks before the opening of the meeting, and be in conformity with: the corresponding agendas, the formal mandates, the official forecasts, and the established regulations of the General Assembly on the control and limitation of documentation, including regarding the word limits (documents by the secretariat should not exceed 8,500 words and those by intergovernmental bodies 10,700 words).

B. Official languages

11. The provisional agenda and the other official meeting documents must be made available by the secretariat in the three official languages of the Meetings of the Parties, English, French and Russian, at least two months before the meeting, in accordance with rules 49 and 10.

[8] It is not possible to connect via mobile devices (mobile phone or i-pad) to online interpretation platforms such as Interprefy.

[9] Working Group on Environmental Impact Assessment and Strategic Environmental Assessment and, for any part not covered by its own modus operandi, the Implementation Committee.

12. The sessions of the Meetings of the Parties and the meetings of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment must be conducted in the three official languages (English, French and Russian) of the Meetings of the Parties, in accordance with rule 47.

C. Registration and credentials for remote participants

13. All representatives of Parties and stakeholders in meetings with remote participation must pre-register online as early as possible, and, to the extent possible, at least five weeks before the meeting through a link provided by the secretariat and, in the case of hybrid meetings, indicate therein their intent to participate either remotely or in-person. To register via the online registration system currently in use (Indico), all participants must have created and activated an online account providing detailed contact information and a picture. Each online registration is subject to a prior review by the secretariat. The email address of the participant provided in the online registration form will be that used by the secretariat for communications and dissemination of materials related to meetings in advance of and during the meetings. Prior to the meetings, the secretariat generates lists of participants based on the pre-registrations, which it verifies and adjusts, as required, during the meetings.

14. According to rules 14–16 of the rules of procedure, for sessions of the Meetings of the Parties, representatives of Parties must submit credentials to the secretariat. The credentials should be issued either by the Head of State or Government or by the Minister of foreign affairs or, in the case of a regional economic integration organization, by the competent authority of that organization. In accordance with the established practice, to facilitate the verification and later reporting on the credentials to the meeting, scanned copies of the credentials should be emailed to the secretariat at least two weeks in advance of meetings, or by the date otherwise indicated by the secretariat. The credentials should list all representatives of Parties whether intending to participate in meetings with remote participation in-person or online/remotely. The originals of credentials should be submitted to the secretariat prior to or at the meetings, if possible, not later than 24 hours after the opening of the meeting. For meetings with remote participation the originals can by submitted either in-person or by post before the start of the meeting[10] or, in extraordinary circumstances that prevent such submissions from being made, as soon as possible thereinafter.

15. The provisional agenda of and/or invitations to meetings may further specify procedures and the time-schedule concerning registration and credentials.

16. For the attention of those pre-registered participants that intend to participate remotely, the secretariat will provide information on remote participation in advance of meetings, including logistical and practical information on the means of connecting to the online platform and remotely hearing other participants and addressing the meetings.

17. All pre-registered participants intending to participate remotely should test their audio and video connections in advance of meetings, and follow the technical guidance and recommendations provided to ensure that they are able to participate remotely (in particular, by ensuring a strong and stable internet connection, via Ethernet (LAN) cable, and by using a PC or a laptop and a USB headset with a microphone). Nearly always, any technical problems with remote participation that may arise result from the inadequacy of participants' internet connection or microphone.

D. Determining a quorum with remote participation

1. General rules and the conduct of business

18. In accordance with rule 27 of the rules of procedures:

[10] If credentials are submitted by post, delegations are requested to send them sufficiently in advance of the meeting to enable their receipt by the secretariat by the beginning of the meeting.

(a) The Chair may declare the meeting open and permit debate to proceed when representatives of at least one third of the Parties are present (which is, currently, at least 15 Parties of the 44 States Parties to the Convention);[11]

(b) For decision-making, the presence of a majority (more than a half) of the Parties is required (which is, currently, 23 Parties of the 44 States Parties to the Convention, or for the matters concerning only the Protocol, 17 Parties of the 32 States Parties to the Protocol).

19. For meetings with remote participation, the "presence" of representatives of Parties will be established through both in-person and remote participation.[12] For Parties represented remotely, the Chair will establish a Party's presence by confirming that the Party representative is connected to the online meeting platform and appear on the screen where remote participants are shown.

20. A check will be carried out to ensure that a quorum has been secured at the opening of meetings – specifically before the report on credentials is delivered by the Chair – and at times of adopting decisions and other official documents, elections and, if required, voting. For the purpose of verifying that a quorum has been secured, the Chair, with the help of the Secretariat, will count the number of Parties present. A Party's presence through remote participation is established as described in para. 19 above.

21. Representatives of the Parties should ensure that their Internet (or telephone) connection to the online meeting platform is secure and stable throughout meetings and that they can be heard clearly when given the floor.

22. Where a quorum has not been secured or there is a connection failure on the side of the online platform provider, the secretariat or the Chair, the meeting may, depending on the decision of the Chair, be suspended until an Internet (or telephone) connection to the online platform of the meeting is re-established for participants facing connection difficulties. The secretariat may communicate between the Chair and remote participants through their pre-registered email addresses on matters regarding connection failure.

~~**2. Status of the European Union under the Convention – and the determination of quorum**~~

~~23. The European Union is Party to the Convention and the Protocol. All of its current 27 member States are also Parties to the Convention and 23 of its member States (all except Belgium, France, Greece and Ireland) are Parties to the Protocol.~~

~~24. The rights and obligations of the European Union and its member States under the Convention and the Protocol are as follows:~~

~~(a) Article 17 (5) of the Convention provides that "[i]n the case of such organizations [in the present case, the European Union], the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Convention." The same article further provides that "[i]n such cases, the organization and the member States shall not be entitled to exercise rights under this Convention concurrently;"~~

~~(b) Article 12 (2) of the Convention provides that "[e]xcept as provided for in paragraph 1 of this article, regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa."~~

~~25. Pursuant to article 17 (5) of the Convention quoted above, the European Union and its member States are not permitted to exercise their rights under the Convention or the~~

[11] Currently, 44 States and the European Union are Parties to the Convention; and 32 States and the European Union are Parties to the Protocol. All Protocol Parties are also Parties to the Convention. The 44 States Parties to the Convention include all the current 27 member States of the European Union. Pursuant to article 17 (5) of the Convention, the European Union cannot exercise its rights under the Convention concurrently with its Member States (see paras 23–25 below).

[12] See practice in this respect by Parties under ECE multilateral environmental agreements in footnote 1 and para. 3 above.

~~Protocol concurrently. Therefore, it is for the European Union and its member States to determine and inform the secretariat whether, for the purpose of establishing the existence of a quorum (for opening of the meeting and for taking decisions), the individual member States of the European Union are to be counted, or whether the European Union is to be counted as 27 Parties present/participating in a meeting for matters on the Convention (or 23 Parties for matters concerning only the Protocol).~~

E. Decision-making in meetings with remote participation

1. Facilitating consensus by early communication of amendment proposals

26. In accordance with rule 37 (1) of the rules of procedure, "the Meeting of the Parties shall make every effort to reach its decisions by consensus".

27. Taking stock of the difficulty of the Meetings of the Parties to reach consensus on all matters on their agenda at three consecutive sessions (in 2014, 2017 and 2019) and with the aim to learn lessons for the future sessions of the Meetings of the Parties, the Bureau and the Working Group have agreed on the importance of constructive dialogue and cooperation. Moreover, as recommended by the Bureau, the Working Group agreed that proposals for amendments to official meeting documentation should be communicated as early as possible prior to the sessions to help Parties to prepare and coordinate their corresponding views in advance. These conclusions were to apply also to the meetings of the Working Group for ensuring efficient preparations of the Meetings of the Parties' sessions and to facilitating consensus on outstanding issues.[13] Subsequently, the Working Group calls on all Parties ~~has specified~~ that amendment proposals, if possible, should be communicated ~~at least~~ three weeks in advance of the sessions. ~~and be made available on the webpage of the meeting on the ECE website~~.[14]

28. For meetings with remote participation, it is particularly important that Parties facilitate efforts to reach consensus by submitting any comments or proposals for amendments to draft decisions and other official documents that they may have well in advance of the meetings. The comments or proposals should be emailed to the secretariat at least three weeks before the meeting, or at another deadline to be agreed by Parties, preferably using track changes, for the secretariat to make available online for information of all delegations.

29. During the meeting, if so required in view of the proposed revisions or comments received, the Chair, in consultation with the secretariat, may invite Parties to participate in-person and/or remotely in informal side meetings held on the margins of meetings with the intention of reaching a consensus. Making use of this option will depend on the availability of additional meeting space (online and/or physical) and interpretation time.

2. Voting ~~where every effort to reach a decision by consensus has been exhausted and as a last resort~~ in meetings with remote participation

30. In accordance with rule 37(1) of the rules of procedure, if all efforts to reach a consensus have been exhausted and no agreement has been reached during meetings, "the decision shall, as a last resort, be adopted by a three-fourths majority vote of the Parties present and voting at the meeting". Decisions of the Meetings of the Parties on procedural matters are to be taken by a simple majority of the Parties present and voting at the meeting.

31. For meetings with remote participation, and similar to the determination of a quorum for opening of the meeting (see para. 19 above), the Chair will establish a Party's presence by confirming that the Party's representative is connected to the online meeting platform and appear on the screen where online/remote participants are shown.

~~[13] See report of the Working Group on its eighth meeting (Geneva, 26–28 November 2019) ECE/MP.EIA/WG.2/2019/2, para. 49.~~

~~[14] See report of the Working Group on its ninth meeting (Geneva, 24–26 August 2020) ECE/MP.EIA/WG.2/2020/2, forthcoming.~~

32. Rule 37 (4) further provides as follows: “For the purposes of this rule, ‘Parties present and voting’ means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall be considered as not voting.” Accordingly, States Parties exercising the right to vote can vote “yes”, “no” or “abstain”. The vote “yes” would be in favour of adopting the decision, “no” against the adoption of the decision and “abstention” would not be considered as voting.

~~33. The European Union can exercise its right to vote on matters within its competence. In these circumstances the vote by the European Union should be counted as 27 votes, (or as 23 votes for matters concerning only the Protocol), pursuant to article 12 (2) of the Convention and/or article 16 (2) of the Protocol. Pursuant to the same provision, member States of the European Union may not vote if the European Union is voting.~~

34. As to the method of vote: According to rule 43, except for elections, voting should be by show of hands, or, if requested by any Party, by roll call or a secret ballot. Rule 46 stipulates that, in absence of consensus, elections are decided by means of a secret ballot.

35. To ensure reliable outcomes and avoid challenges, including in the counting process, voting during meetings with remote participation will be carried out by roll call and conducted as follows:

(a) In accordance with rule 43, the Chair will call on participants in the English alphabetical order of the names of the Parties present at the meeting, beginning with the Party whose name is drawn by lots by the Chair;

(b) The heads of delegations of Parties will indicate “yes”, “no” or “abstention” either in-person or, if participating remotely, verbally by speaking through their audio device connected to the online platform;

(c) In case of audio connection failure, the head of delegation concerned may indicate the Party’s vote through the chat function of the online meeting platform;

(d) Should any head of delegation of a Party fail to a cast vote during the roll call for any reason, including possible remote connection failure, that head of delegation will be called upon during a second, final roll call after the conclusion of the initial roll call;

(e) If a Party is participating in the meeting through an online platform, but wishes to be absent at the time of the voting, that Party may either leave the meeting by disconnecting from the online platform or step away and disappear from the screen. In both cases, the Party should inform the secretariat (through the chat function of the online meeting platform) of its wish to be absent during the voting process;

(f) The secretariat will assist the Chair in administering the vote and in counting its results;

(g) The Chair will announce the results of the vote during the meeting;

(h) The vote and its results will be recorded in the report on the sessions;

(i) If, for any reason, any Party failed to cast a vote during both the initial and the final roll call, that Party will be considered as being absent from the voting process. Any such Party may indicate to the secretariat how it intended to vote, after the vote, with its voting intention being reflected in the respective official meeting report.