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INFORMATION NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Convention on Environmental Impact Assessment in a Transboundary
Context: Ninth Meeting of the Working Group on Environmental Impact
Assessment and Strategic Environmental Assessment
(WG 9 on EIA and SEA) (Geneva, 24–26 August 2020)
- Statements by the EU and its Member States

Delegations will find in [Annex](#), for information, a compilation of statements delivered on behalf of the EU and its Member States, at the 9th Meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 24–26 August 2020), as transmitted by the Presidency.

Convention on Environmental Impact Assessment in a Transboundary Context
Ninth meeting of the Working Group on Environmental Impact Assessment
and Strategic Environmental Assessment (WG 9 on EIA and SEA)
(Geneva, 24–26 August 2020)

- Statements by the EU and its Member States -

Agenda item 1): Adoption of the agenda

The EU and its Member States would like to thank the Secretariat and the Chair of the 9th meeting of the Working Group on EIA and SEA for the preparatory work and organization, considering the conditions caused by the COVID-19 pandemic.

We understand that the organization of this meeting as a hybrid meeting allows delegations who wish to join remotely to do so, when this is necessary due to health and safety concerns in these challenging times.

Due to the existing situation, the EU and its Member States have been confronted with considerable challenges in coordinating and preparing their position. Against this background we would like to underline that the EU and its Member States will define their final position before the next Meeting of the Parties to the Espoo Convention and to the Protocol on SEA and that they reserve the right to react and comment on new developments that may arise during the hybrid meeting of the Working Group at a later stage.

Agenda item 3): Financial arrangements

1. The EU and its Member States thank the Bureau for its proposals on the financing of the Convention and the Protocol. The EU and its Member States acknowledge that the financial situation of the Convention and its Protocol is severe and needs improvement, predictability and long-term solutions. It acknowledges that securing financing is of great importance to keep the Convention and its Protocol functional.
2. The EU and its Member States reiterate its position from the last Working Group in November 2019 that the leading principle should be that all Parties take part in sharing the extra-budgetary costs to keep the Convention and its Protocol functional. Nevertheless, the EU and its Member States do not support the Bureau's proposal to introduce a mandatory scheme based on the adjusted scale of assessments for the apportionment of the expenses of the United Nations.

3. In order to ensure that all Parties take part in sharing the costs, the EU and its Member States propose to increase the pressure on those Parties that have so far never, or not recently, contributed to the trust fund. Each Party is expected to make yearly or multi-year contributions to finance the implementation of the workplan. The Parties should be urged to fulfill their obligation to do so. If there is no contribution until the end of the relevant year, the Secretariat of the Espoo Convention could write to those Parties to impress upon them the importance of contributing.
4. The Parties should pledge their contributions well in advance of the adoption of the workplan to provide greater certainty for financial and project management.
5. All Parties should be encouraged to raise their contributions during the current and future budget cycles.
6. It is highly recognized that pledges in cash are needed, but the Bureau's proposal on the financing of the Convention and the Protocol should also take into consideration that not only pledges of parties made in cash are supporting the work under the two treaties. It should be given more attention to in kind contributions by Parties to the Convention and the Protocol. An important issue in this regard is the development of a system to recognize in kind contributions in a proper manner. This could be given as a task to the Bureau for the next intersessional period.

Agenda item 4): Preparations for the next sessions of the Meetings of the Parties

Agenda item 4 (a) *Practical arrangements*

The EU and its Member States would like to thank the Bureau and the Secretariat for initiating the preparations for the next session of the Meeting of the Parties, and warmly thank Lithuania for its generous offer to host the MOP session in Vilnius from 8-11 December 2020.

Agenda item 4 (c): *Draft workplan 2021-2023*

1. The EU and its Member States would like to thank the Secretariat for the preparation of the draft workplan 2021-2023.
2. As the proposal for the workplan is very ambitious, the EU and its Member States would like to refer to its general statement held at Working Group 8 that the workplan should be matched with the budget and resources available, including those of the Secretariat.
3. For that reason the EU and its Member States would like to reiterate its proposal of having only one list of activities, which are regarded necessary and feasible in the light of resources. The workplan should only include activities which are covered by the budget whereas in kind contributions should be possible. An additional annex with activities happening if there is available funding provides great uncertainty. In order to gain stability, it is crucial to know what we all are committing ourselves in the beginning of an intersessional period.

4. In order to structure activities and prioritize, this one list of activities could be divided into a section for activities that are necessary for the functioning of the treaties and a section for all other activities. The first section could contain core issues like organisational issues e.g. organizing Meeting of Parties, Working Groups, and meetings of other treaty bodies. The second section could contain all activities, which are not absolutely necessary for the functioning of the treaties. The workplan should also give information, which Parties intend to contribute and/or would like to be involved.
5. One issue of general importance is the development of new guidance and good practice recommendations. It has to be taken into account that the development of any new guidance or good practice recommendations, as well as the revision of existing ones, as already discussed in the 8th Meeting of the Working Group, is very demanding, and requires a lot of resources and time. The need and scope for any revision or new guidance should be considered very thoroughly before deciding to draft new guidance documents or revising the existing ones.

Agenda item 4 (d) Draft Vilnius declaration

1. The EU and its Member States would like to thank the Bureau and the Secretariat for the preparation of the draft Vilnius declaration.
2. We recognize that the draft Vilnius Declaration is a living document, depending largely on the evolution of discussions on various other issues before the Meeting of the Parties in December. Therefore, at this stage we would like to put forward some remarks about the wording of the Vilnius Declaration, but also reserve the right to clarify our position at a later stage.
3. The EU and its Member States would like to make the following remarks:
 - The paragraph starting with: *“Recalling the objectives(a)...”* should be changed into: *“Prevent and mitigate significant adverse environmental, including health, impacts likely to arise from envisaged economic activities or development”*
 - The paragraph starting with: *“Expressing serious concerns...”* should be deleted. This issue should not be stressed in such a force in the declaration.
 - Paragraph 2 should be reformulated so it reads as follows: *“Commit to strengthen the efforts in contributing to the functioning of the treaties in a sustainable manner.”*
 - Paragraph 4 should be changed into: *“Undertake to boost the application of the Convention and the Protocol, including, as needed, through guidance, awareness-raising and capacity-building, with a view to making full use of their potential for addressing new and emerging national, regional and global challenges and goals”*.

Agenda item 4 (e): *Chairs of the sessions*

The EU and its Member States would like to propose as candidate for chairing the high-level segments of the sessions the Finnish Minister of the Environment and Climate Change Ms. Krista Mikkonen.

Agenda item 4 (g): *Officers for the next intersessional period*

The EU and its Member States would like to announce that the current Swedish member of the Implementation Committee, Mr. Anders Bengtsson, has confirmed his availability to serve as a member of the Implementation Committee for the next intersessional period. The EU and its Member States warmly welcome this offer.

The EU and its Member States wish to come back with further proposals for nominations at a later stage.

Agenda item 5: Promoting ratification and application of the Convention and the Protocol:

Agenda item 5 (b): *Draft guidance on assessing health impacts in strategic environmental assessment*

1. The EU and its Member States would like to:
 - a. Thank the Bureau and the Secretariat for their preparatory work on the draft guidance on assessing health impacts in strategic environmental assessment;
 - b. Thank the European Investment Bank for providing the funding for this activity in the current working plan;
 - c. Thank the consultants, the European Investment Bank and the World Health Organization (WHO) for preparing the draft guidance.; and also
 - d. Thank the task force composed of a delegation of the European Union, namely representatives of Austria, Finland, Ireland and Slovenia for their recent inputs and comments.
2. The EU and its Member States recognize that the consideration of health effects is an important matter to be taken into account in SEA.

However, the EU and its Member States note that, although there has been significant progress in quality of the document, the draft Guidance is not fully in line with the objectives and expected outcome discussed in the eighth meeting of the Working Group, and therefore still needs to be revised in a broader way.

3. The EU and its Member States are concerned that this comprehensive revision still needed will have to be done before 1 October 2020, which is the deadline for the documents for the 8th Meeting of the Parties. The EU and its member states consider it necessary to examine postponing the decision on the Health Guidance until the next 9th Meeting of the Parties. The EU and its MS cannot agree on the endorsement of this draft guidance in its current state.
4. The EU and its Member States would like to make the following remarks about the content of the draft:
 - a. The Draft Health Guidance - even after the revision done with the assistance of the task force - in its current state appears rather abstract and theoretical. It does not necessarily fulfil the objectives and expected outcome set for this task. The Guidance should assist Parties and future Parties to the Protocol on SEA to efficiently and consistently address relevant health issues in SEA procedures. Although the guidance contains recommendations for good practice the EU and its Member States are strongly concerned that the Guidance could be a source of confusion and enquire the Parties to observe administrative arrangements which are not necessarily justifiable under the SEA Protocol.
 - b. For its definition of term “health”, the Draft Health Guidance applies the definition derived from the WHO Constitution (for example, see section II.A.12-13), which is the generally accepted definition of health within the UN system. But, when assessing health impacts in strategic environmental assessment under the Protocol, only environment related health aspects should be regarded. This aspect has to be clarified in the Guidance to avoid broadening the interpretation of the term ”health”.
 - c. Focusing on environment related health aspects is necessary in order to avoid overburdening and considerable uncertainties in strategic environmental assessment procedures and therefore optimize the efficiency of this instrument and streamline procedures.
 - d. There is no legal basis for applying this definition of “health” without considering any restrictions: The SEA Protocol was negotiated with a focus on environment related health and the Protocol explicitly speaks of “environmental, including health, effects”, which clarifies that the health aspects assessed in strategic environmental assessments must be directly linked to the environment. The Protocol as the underlying legal framework binds the Guidance. Consequently, the Guidance has to be limited to the scope of the Protocol. In the actual procedure of conducting the strategic environmental assessment, the addressing of health aspects therefore must be limited to environment related health aspects specific for every project itself (for example: impact on soil, water, climate, natural vegetation and land forms....).
 - e. This Guidance could be improved if it included a reference or example of plans/programmes that have little or no interaction with health, therefore requiring no assessment of health impacts. This is not to suggest that health impacts are ignored, they have to be covered in all SEA procedures under the Protocol. However, the guidance will only be particular useful for the plans and programmes that have clear relationships with health objectives. Not all of the advice may be relevant or beneficial in every plan and programme planning situations. It should therefore be the responsibility of the public authority to decide how these guidelines can benefit their particular case.

Agenda item 6): Compliance and implementation

Agenda item 6 (a): *Review of compliance and related draft decisions*

The EU and its Member States respect and support the work of the Implementation Committee of the Espoo Convention. We would like to thank all Parties, which contribute by nominating members of the Implementation Committee. We also thank the Secretariat for its continuous support of the Implementation Committee.

Draft decision VIII/4 on general issues of compliance with the Convention

The EU and its Member States suggest the following remarks to be taken into account by the Implementation Committee when revising the draft decision:

1. Para 5 should be deleted as this information is vague and the Party concerned has not yet been subject of a notification.
2. We consider the information provided in para 6 very important, nevertheless, it should be noted that at least one of the Parties mentioned has not yet been notified of the cases by the Implementation Committee. We would like to point out that the Implementation Committee should notify the Parties concerned as soon as possible and that an explicit reference to a Party in this draft decision without prior notification seems unjustified; reference to the numerous information gathering cases should therefore be made in more general terms - not naming individual Parties - until formal notification by the Implementation Committee of this Party has taken place; the para should be reformulated accordingly. The transmission of the report of the Implementation Committee shall not be considered as a notification in due form.
3. The vocabulary used for para 6 could be revised in order to use the terms validated during the Meeting of the Parties.
4. Concerning Point 9 using a more stringent view than “urge” would be recommended. We invite the Implementation Committee to reconsider this point.

Draft decision VIII/4c on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets

The EU and its Member States would like to present the following suggestion to be taken into account by the Implementation Committee:

To complement the para. 4:

“4. Reaffirms its decision IS/1d *including paragraph 15 that Belarus failed to comply with certain provisions of the Convention and paragraph 16 that urges Belarus to apply the Convention in the future with regard to a proper evaluation of reasonable alternatives*, and again encourages Belarus and Lithuania to comply with paragraphs 17-19 of that decision by the ninth session of the Meeting of the Parties, with a view to

The reason behind this suggestion is that although the title of the draft decision refers to the compliance by Belarus, the text itself is suggesting that both countries are in non-compliance with its obligations under the Convention.

Draft decision VIII/4d on compliance by Ukraine with its obligations under the Convention in respect of the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta

The EU and its Member States encourage the Meeting of the Parties to take more stringent actions than only keeping the caution effective. It has been almost 12 years that the caution has been active on these same issues. The EU and its MS propose to give the Implementation Committee the task to consider a more effective proposal.

Agenda item 6 (b): Draft guidance on the applicability of the Convention to the lifetime extension of nuclear power plants

Introductory statement

The EU and its Member States thank the Co-Chairs as well as the members of the ad hoc working group for their efforts and commitment in drawing up guidance on the applicability of the Convention to the lifetime extension of nuclear power plants and the Secretariat for its continuous support of this work. We are well aware that this is a complex and demanding task, considering in particular the difficult circumstances under which the ad hoc group had to proceed during the Covid-19 pandemic.

The EU and its Member States recognize the urgent need for guidance to assist the Parties in determining the applicability of the Convention with respect to lifetime extensions of nuclear power plants and to guide the Implementation Committee in assisting Parties to fully comply with their obligations under the Convention and reviewing related compliance cases. We confirm our support for developing this guidance in line with the mandate given by the 7th Meeting of the Parties, the extended mandate, given by the Working Group on EIA and SEA at its 7th meeting, the Terms of Reference, also adopted at that meeting, and decision IS/2 adopted by the Meeting of the Parties at its Intermediary Session.

State of Work

The EU and its Member States welcome the draft guidance published on the UNECE website as a good basis for further discussion. Considering the complexity of the matter, important results have already been achieved. Nonetheless, given the fact that the draft has not been validated by the ad hoc group, we are of the view that further considerations are needed in order to accommodate the remaining concerns of Parties and reach an agreement on text that would command consensus. This regards issues of particular disagreement which have been placed in square brackets, but also other issues. Work on these issues must therefore be taken forward in a spirit of compromise with a view to reach a consensus.

Further procedure until the MOP

The EU and its Member States propose to the Parties at the 9th meeting of the Working Group on EIA and SEA that the ad hoc group is mandated to continue its work in revising and finalizing the draft guidance, taking account of the comments and suggestions received in the context of that meeting, and to submit the revised draft guidance to the Meeting of the Parties for finalisation and adoption at its 8th session. The EU and its Member States reserve the right to bring issues of particular importance into the discussion taking place in the ad hoc group and at the Meeting of the Parties.

Draft decision VIII/6

The EU and its Member States have at this stage reservations on the related draft decision VIII/6 and suggest a detailed discussion on its form and content once the draft guidance has been finalised.

Agenda item 6 (c): *Reporting and review of implementation*

Draft decision VIII/5 on reporting and review of implementation of the Convention

The EU and its Member States thank the Bureau for preparing the draft decision on reporting and review of implementation of the Convention (VIII/5).

We would like to make the following remarks:

- In paragraph 3(c) the term “*express provision*” should be clarified. One suggestion would be to replace the term “*express provision*” with the term “*explicit provision*”;
- Paragraph 3(f) should be amended, so it reads as follows: “*Guidance documents developed to help implement the Convention are being used less frequently; Parties do not see a need to update most of the current documents*”; in the Review of Implementation, only one Party seems to have taken up the issue by suggesting that a review be conducted to ascertain whether there is a need for an update. Parties’ answers, as summarized in the Review, do not give evidence of a broader wish to commissioning additional guidance.
- Paragraph 3(g) should be amended as follows: “*Bilateral and multilateral agreements or other arrangements under Art. 8 can) be useful, in particular to address differences between Parties application practices;*”
- In paragraph 3(i) the first sentence should end after “*documentation*”. It is unclear what “basic measures” are. The second sentence should also be deleted as it only refers to one Party.
- In paragraph 5 the words “*if necessary*” could be inserted twice. The Implementation Committee should adjust the questionnaire only if necessary.

Draft Decision IV/5 on reporting and review of implementation of the Protocol

The EU and its Member States would like to thank the Bureau for preparing the draft decision on reporting and review of implementation of the Protocol (IV/5).

We would like to make the following remarks:

- The recital stating observations about the reporting of the European Union should be deleted. The EU reported in time and was the first Party submitting its feedback to the Secretariat. It provided updates on relevant policy and legislative issues. It is not the first time the EU provided its updates in a free format.
- In paragraph 3(a), the word “majority” should be replaced by “some” and in the last sentence should be deleted. There is no explicit requirement in the Protocol for further definitions. Some Parties may have guidance on this issue other may have implemented the requirements in several material acts, where no further definition is useful. Moreover, the last sentence should be deleted. Unless there is evidence for any impediments in implementing the Protocol in this part a compliance decision is not the source to speculate about “deficiencies”.
- Paragraph 3(b), first sentence should be shortened: “Some Parties have different approaches whether and how to involve the public in screening and scoping further to articles 5 (3) and 6 (3).” To involve the public in screening and scoping is not mandatory. This should be reflected in the wording of the decision.
- In paragraph 3(d) the word “some” should be inserted before “consultations”. Not every consultation is complicated by difficulties arising from Parties’ differing practices.
- In paragraph 3(e) “might be useful” should be chosen.
- In paragraph 3(f) the words “in developing material” should be deleted. It would be preferable to have a more open formulation, which would allow different options.
- In paragraph 3(h) the first sentence should read as follows: “Relatively few Parties use the Resource Manual, but it is unclear why the Resource Manual is not used. Assumptions should be avoided. Moreover, “a number of” should be replaced with “some”.
- In paragraph 3(i), first line the word “is” should be replaced with “may be”. The third sentence should be deleted as it is not related to quality control.
- Paragraph 3(j) should be deleted. It is unclear to whom it is addressed and the different monitoring practices do not necessarily lead to difficulties concerning scope and duration of the monitoring. The monitoring systems/practises need to be adjusted to the different plans and programmes at different levels. Monitoring systems depend also on the different planning/programming procedures and their content.
- In paragraph 5 the wording “if necessary” should be inserted with regard to the adjustment and the provision of a “modified version”. The questionnaires should only be changed if it is really needed.
- Paragraph 6 should be amended so it reads as follows: *Also requests the Implementation Committee to prepare, in consultation with the European Union, represented by the European Commission, a reporting template that fits the nature and the competencies of the European Union.* The EU is the only regional economic integration organization that is Party to the Convention and eventual template for reporting should take into account its nature and competencies it is granted through the founding Treaties.

Agenda item 6 (d): Draft long-term strategy and action plan for the Convention and the Protocol

1. The EU and its MS would like to thank the Netherlands and Poland for preparing a revised draft strategy and action plan for the Convention and the Protocol. We would also like to thank the secretariat for the support in this activity. The current draft has made great progress.
2. The EU and its MS would like to make following remarks:

The draft long-term strategy and action plan for the Convention and the Protocol is very comprehensive and compiles important issues to be noted. However, the EU and its MS would like to refer to the statement made in the Working Group 8 and in order to distinguish between a long term strategy and the workplan of the Convention ,suggest to concentrate on the main priorities and to shorten the text in places where appropriate.. This would give more weight to the priorities made and keep it on a more abstract level. The actions and activities listed under priorities should be shortened considerably. Priorities and activities of the strategy should be realistic, effective and subject to the availability of resources. It must be made clear that the activities are possibilities or proposals to achieve the priorities.

The EU and its MS suggest that the draft strategy will be developed further and will be streamlined by the two leading countries possibly with the help of a drafting group taking account of these remarks.
