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TASK FORCE ON ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT

Report by the Chairman of the Task Force

1. The Task Force was established, with the Netherlands as lead country, by the Committee on Environmental Policy at its seventh session in September 2000 (ECE/CEP/74). It was mandated to develop guidelines on environmental compliance in readiness for the fifth Ministerial Conference “Environment for Europe” in Kiev, in 2003, and to report progress to the Committee at its eighth session in 2001.
2. Through a circular letter to the heads of delegations to the Committee, governments were invited to nominate qualified experts to participate in the work of the Task Force. Other international organizations with activities in this field were also invited. Experts from the following countries contributed to the work of the Task Force: Andorra, Armenia, Belgium, Canada, Czech Republic, Denmark, Finland, Georgia, Germany, Greece, Hungary, Italy, Kazakhstan, Netherlands, Norway, Poland, Republic of Moldova, Romania, Russian Federation, Slovakia, Sweden, the Former Yugoslav Republic of Macedonia, Ukraine, United Kingdom, United States and Yugoslavia, as well as representatives from the United Nations Environment Programme (UNEP), the Regional Environmental Center for Central and Eastern Europe and European Ecoforum.
3. The Task Force held five meetings between June 2001 and October 2002. In addition, two small drafting groups met in The Hague (Netherlands) in February and June 2002, to prepare elements for the draft guidelines and to consider the issues of reporting. The draft

guidelines were presented at the informal meeting of representatives of the Bureau of the Committee and of the Bureaux of the five ECE environmental conventions held on 1 July 2002 in Geneva. In the discussion that followed, several useful ideas and comments were put forward. These were transmitted to the Task Force for consideration in finalizing the draft guidelines. A progress report was submitted to the Committee at its session in September 2001 (CEP/2001/8). The Committee was further informed about the progress in the development of the draft guidelines at its ninth session in 2002.

4. The Task Force considered the purpose and scope of the guidelines with particular focus on the ways in which they could add maximum value for the region. The Task Force took into consideration the work done on the Guidelines on Compliance and Enforcement of multilateral environmental agreements (MEAs), adopted by the Governing Council of UNEP at its seventh special session in February 2002 (SS.VII/4). For example, it adopted the same definitions of the terms “compliance”, “implementation” and “enforcement” as used in the UNEP Guidelines and focused on the elements that could be further elaborated from a regional perspective, to ensure maximum added value for the ECE region.

5. The Task Force based its work on background documents prepared by the secretariat dealing with the issues of compliance mechanisms, funding mechanisms and reporting regimes. It was decided that these background documents might serve as useful resource material and should be updated and posted on the UNECE web site.

6. It discussed the issue of enforcement in the national context and concluded that enforcement aspects could be considered as part of the national implementation process. Therefore, a special section on enforcement was not needed in the guidelines.

7. The Task Force also discussed the question of whether “guidance” or “guidelines” was a more appropriate title for a document which would not have any legal force. While it was agreed that there was no substantial difference, considering the nature and purpose of the document, the vast majority of the Task Force’s members felt that the term “guidelines” should be retained, as it was also in accordance with the original mandate given by the Committee on Environmental Policy. It was agreed that the title “Guidelines on strengthening compliance with and implementation of MEAs in the ECE region” reflected more clearly their content and value added.

8. The final draft guidelines highlight some options for strengthening compliance and implementation of MEAs relevant to the ECE conventions. They also identify obstacles and potential solutions which may be relevant to the development of new MEAs for the ECE region. They address compliance and implementation in a broad context, touching upon cross-cutting issues starting from the negotiation stage, national implementation, reporting, review of compliance, and organizational issues, including funding.

9. The Task Force put forward the draft guidelines on strengthening compliance with and implementation of MEAs in the ECE region for approval by the Committee on Environmental Policy and subsequent submission for adoption at the Fifth Ministerial Conference “Environment for Europe” in Kiev, in May 2003.

10. Making environmental conventions and the exchange of experience on their implementation more effective is one of the strategic pillars on which the Committee on

Environmental Policy bases its work. Concluding its task, the Task Force proposed a number of actions which the Committee might consider in the future to promote the improved implementation and compliance with MEAs:

(a) The secretariat could provide the Committee with an annual report summarizing the findings and conclusions of the ECE conventions, highlighting achievements and obstacles to implementation;

(b) The Committee could discuss the annual report during its annual session and, in accordance with its mandate, whilst recognizing the autonomy of the MEAs, could provide policy direction for the ECE region;

(c) To extend the knowledge base on compliance and implementation issues, a portal service could be established on the ECE web site providing links to all appropriate documents, legal texts, examples of national legislation, decisions, papers, and practical examples and case studies relating to compliance and implementation;

(d) Explore avenues to improve ability of ECE to offer advice to countries to help build their capacity to implement specific treaty obligations, in areas such as emission inventories, monitoring, legislative assistance, available technologies, and financial and economic mechanisms;

(e) Seek ways to strengthen further the legal expertise available to ECE, inter alia, through a roster of experts, appropriate staffing and partnerships with other organizations;

(f) Consider how the Environmental Performance Reviews (EPRs) could be better used as tools for the exchange of information on the implementation of MEAs, aiding ratification of conventions and protocols, and building capacity needs;

(g) Invite representatives of implementation committees of ECE conventions to share information and experience, e.g. through electronic communications, reports and meetings.

11. The Committee could propose to the Working Group of Senior Officials to consider including a reference to the guidelines in the draft Ministerial Declaration for the Kiev Ministerial Conference.

Annex

DRAFT GUIDELINES FOR STRENGTHENING COMPLIANCE WITH AND IMPLEMENTATION OF MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEAS) IN THE ECE REGION

At its seventh session in September 2000, the ECE Committee on Environmental Policy decided on the development of guidelines on environmental compliance and enforcement in association with preparations for the fifth Ministerial Conference “Environment for Europe” in Kiev and mandated an open-ended task force led by the Netherlands to work on the issue. These Guidelines have been drafted pursuant to this decision.

Introduction

1. The need to strengthen the implementation of and compliance with ECE multilateral environmental agreements (MEAs) has been recognized as a key priority. The purpose of these Guidelines is therefore to highlight options for strengthening compliance and implementation of MEAs, recognizing that each agreement is negotiated in a unique way and enjoys its own independent legal status. The Guidelines also identify obstacles and potential solutions which may be relevant in the development of new MEAs in the ECE region.
2. These Guidelines take note of and build upon the Guidelines on Compliance with and Enforcement of MEAs, adopted by the Governing Council of the United Nations Environment Programme (UNEP) at its seventh special session in February 2002 (SS.VII/4). They focus on those elements that can be further elaborated from a regional perspective.

Scope

3. These Guidelines relate to compliance with and implementation of MEAs relevant to the ECE region, and primarily ECE conventions. They are addressed to ministers, governments, environmental organizations, public authorities, the international environmental community and the public. In particular, these Guidelines are addressed to those who develop, negotiate, implement and decide under MEAs. Compliance and implementation are part of the policy life cycle of an MEA (see graph below) and should constitute an important consideration, starting at earlier stages of development (initiative, pre-negotiation) and decision-making (negotiation, signing, ratification, entry into force).

Definitions¹

4. For the purpose of these Guidelines:
 - (a) “Compliance” means the fulfilment by the contracting parties of their

¹ The definitions of “compliance” and “implementation” are the same as the definitions used in the first chapter of the UNEP Guidelines on Compliance with and Enforcement of MEAs. The definition of “enforcement” is the same as the definition used in the second chapter of the UNEP Guidelines.

obligations under an MEA and any amendments to it;

(b) “Implementation” refers to, inter alia, all relevant laws, regulations, policies, and other measures and initiatives that contracting parties adopt and/or take to meet their obligations under an MEA and its amendments, if any;

(c) “Enforcement” is defined as the range of procedures and actions employed by a State, its competent authorities and agencies to ensure that organizations or persons potentially failing to comply with environmental laws or regulations implementing MEAs can be brought or returned into compliance² and /or punished through civil, administrative or criminal action.

Obstacles to national implementation and compliance

5. Obstacles to national implementation of and compliance with an MEA experienced so far might be, inter alia:

- (a) A lack of sufficient political attention to implementation;
- (b) A lack of awareness of the obligations arising under the MEA by the implementing authorities;
- (c) A lack of technical, administrative and financial capacity;
- (d) A lack of coordination among relevant national authorities;
- (e) A lack of understanding of implementation issues;
- (f) Insufficient preparation (as regards, for example, laws, regulations, training);
- (g) Uncertain or inaccurate data;
- (h) A lack or total absence of monitoring and/or review of implementation;
- (i) Unclear implementing rules/tools/ regulations (for example, related to the translation and interpretation of legal terms and provisions);
- (j) A failure to mobilize public support;
- (k) Insufficient budget allocations, changes in economic circumstances or unforeseen costs of implementation.

² The term “compliance” is used here with the meaning of domestic compliance, or conformity with national legal obligations.

I. CROSS-CUTTING ISSUES

6. Compliance with and implementation of an MEA can be strengthened through efforts aimed at increasing the understanding and ownership of, and meaningful and informed participation in, the MEA and its decision-making processes, inter alia, through:

- (a) The use of clear and unambiguous treaty language;
- (b) The development of treaty obligations taking into account future compliance with such obligations;
- (c) Longer-term agenda-setting, such as the adoption of rolling or longer-term programmes of work, taking into account the benefits of identifying priority issues and of focusing on products and activities;
- (d) Scheduling and conducting its inter-sessional processes and activities in a transparent and predictable manner, taking into account the need for timely and meaningful preparations for participants;
- (e) The formulation of clear terms of reference and mandates for subsidiary convention bodies, including giving consideration as to how these terms of reference and mandates relate to each other;
- (f) The adoption of decisions that include the necessary references and clearly indicate and identify actors, planned or required activities, timelines, expected products and follow-up;
- (g) The regular exchange of information, as well as the further development of sources of information, such as convention handbooks or manuals, and secretariat notifications.

7. Factors to be taken into account in developing treaty obligations, designing compliance provisions or preparing national implementation plans include the following:

- (a) Whether the obligation can be fulfilled primarily through legislative, administrative, practical or other measures;
- (b) Whether the fulfilment of the obligation requires the involvement of different branches of government (legislative, executive, judicial);
- (c) How compliance with the obligation can be indicated or measured;

(d) Whether the fulfilment of the obligation requires the involvement of particular members of the public;

(e) Whether the fulfilment of the obligation is dependent in whole or in part on cooperation with other Parties, other States or persons outside the jurisdiction or control of the Party.

II. IMPLEMENTATION

8. All legal and other appropriate measures required to implement the agreement should be in place, in order to ensure that a Party is in a position to comply with its international obligations at the time of entry into force of the MEA for that Party.

9. Potential Parties should, when preparing to ratify an MEA, develop an explanatory report, including the justification for ratification³ and draft implementing measures for review by the relevant government decision makers.

10. Steps to be considered by a Party in order to meet its international obligations in implementing the MEA, include the following:

(a) Review of each obligation:

- (i) Prior to ratification, relevant authorities should have the MEA reviewed article by article, by technical and legal experts, to determine the nature and extent of each obligation;
- (ii) Each obligation should be assessed to determine whether it requires implementation by a specific existing law, regulation or administrative practice, or by new ones;
- (iii) Where obligations are drafted in general terms, indicators might be developed to assist in the implementation of obligations;

(b) Identification of implementation responsibility:

- (i) The government level/department/agency responsible for implementation should be identified;
- (ii) If implementation is required by more than one government level, the required laws and administrative arrangements should be in place at all those levels of government to ensure effective response to ongoing implementation issues that arise during the life of an MEA;

³ Or acceptance, approval, accession.

- (c) Administrative arrangements:
 - (i) Where an MEA so requires, domestic competent authorities or focal points should be designated. If there are to be competent authorities in different government departments, agreement should be reached on how they will work together to meet the obligations;
 - (ii) Coordination should be ensured between different government departments, inter alia, to avoid any conflict between legislation under development and other national laws;
- (d) Funds:
 - (i) Sufficient ongoing funds should be allocated for domestic implementation of the MEA, including for enforcement;
 - (ii) Sufficient ongoing funds should be allocated to enable the country to meet its assessed share, if any, of the administrative costs of running the agreement (e.g. secretariat), or for any voluntary contributions to the MEA;
- (e) Enforcement:
 - (i) Existing enforcement structures should be assessed for their capacity to fulfil their role in meeting the new requirements;
 - (ii) Relevant enforcement staff should be notified about, and trained for, their role in meeting the new requirements;
 - (iii) Relevant enforcement staff should have the necessary enforcement tools available to them, based on the latest developments in the field, and to this end, full use should be made of existing enforcement networks, such as the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), the Newly Independent States' Environmental Compliance and Enforcement Network (NISECEN), the International Network for Environmental Compliance and Enforcement (INECE), and the Balkan Regulatory Compliance and Enforcement Network (BERCEN);
- (f) Public consultation and education:
 - (i) The public, including environmental groups, the regulated community, and other stakeholders, should be consulted in the development of the new implementing legislation or regulations;

- (ii) There should be public education efforts to engage the public and the regulated community in observing the new laws or regulations;
- (g) Post-ratification: ongoing monitoring of implementation:
 - (i) An implementation monitoring plan should be developed for the MEA;
 - (ii) Internal processes could be put in place to evaluate periodically the implementation plan and to address any barriers to implementation;
 - (iii) The authorities responsible for implementing the MEA should be in communication with those developing international negotiating positions that could affect the implementation of, and compliance with, the MEA.

11. If any obstacles to implementation are identified, countries should draw up a plan to address such obstacles, and if necessary, assess their needs for capacity building and technical and financial assistance. In particular, such obstacles and needs might occur in the country's capacity to:

- (a) Develop, enact and enforce appropriate national laws and regulations, standards, licences or permitting systems implementing the requirements of the agreement;
- (b) Provide and report data, including the monitoring system;
- (c) Adopt and implement policies, strategies or measures necessary to achieve compliance with the requirements of an agreement.

12. Prior to MEA ratification, the governments of countries considering that they require financial assistance could contact international sources of funding to help them implement the obligations under the MEA.

13. Early implementation of an MEA, i.e. application prior to its entry into force, should be encouraged.

III. COMPLIANCE

14. Taking into account the nature and the authority of the MEA, consideration should be given to whether formal mechanisms and procedures should be established to examine compliance by a Party/Parties to an MEA with the obligations contained in it.

15. If a decision to establish such mechanisms and procedures is made, the following features commonly found in such mechanisms and procedures should be examined:

- (a) Objective(s);
- (b) Size and composition of any committee established;

- (c) The functions and mandate;
- (d) Actors entitled to raise compliance issues in the procedure;
- (e) Potential measures;
- (f) Sources of information;
- (g) Procedural safeguards.

IV. REPORTING

Purposes and importance of reporting

16. Most MEAs contain specific provisions obliging Parties to report information to the convention bodies or secretariat at certain intervals. Appropriate reporting makes an important contribution to the effective functioning of an MEA. Reporting of information serves several purposes. It provides:

- (a) An important basis for evaluating the effectiveness of an MEA;
- (b) A means of sharing information among Parties;
- (c) An important basis for reviewing Parties' compliance with their obligations under the MEA;
- (d) Information to the general public;
- (e) To all interested bodies an overall picture of the general tendencies in the implementation of the MEA.

The process of reporting

17. The frequency of reporting should be optimal and realistic to ensure that the most relevant and necessary information is provided for the above purposes in a timely and consistent manner to ease the burden on Parties and on the MEA secretariat.

18. When setting the deadline for reporting, account should be taken of the frequency at which data become available at the national level and of the timing of the international meetings to discuss it.

19. There are benefits to be drawn from the harmonization of different reporting systems, linked to definitions, methodologies and data collection. Where possible and consistent with relevant MEAs, these should be harmonized to enable Parties to report to different conventions and protocols using the same underlying set of data.

20. National reports could, inter alia, include information on:
- (a) Legislative and administrative measures taken to implement the provisions of the agreement;
 - (b) Measures taken to cooperate in promoting technical and financial assistance;
 - (c) Measures taken to establish or strengthen national infrastructures and institutions for the effective implementation of the MEA.

21. Questionnaires have proven useful as a reporting tool. In designing questionnaires, the following considerations should be kept in mind. Questions should be:

- (a) Clear, specific and unambiguous;
- (b) Linked to specific obligations in the MEA to facilitate, inter alia, the review of compliance.

The structure of the questionnaire should be set in a way that gives an opportunity to Parties to communicate any other issues relevant to the implementation of the MEA which have not been addressed by the questions.

22. To ensure that the information obtained is comparable in terms of quantity and quality, it is recommended to consider using:

- (a) Cross references and explanatory notes to provide guidance on the level of detail that is requested in open-ended questions;
- (b) Questions with possible answers listed below so that Parties can indicate whether the statements apply to them or not.

23. To facilitate reporting, it is recommended to consider using:

- (a) Electronic formats that may be Internet-based;
- (b) Pre-filled questionnaires where Parties are requested to confirm the accuracy of the information taken from past national reporting or to update it;
- (c) Examples or other indications for the type of answer sought, including Internet links to more detailed information;
- (d) A user-friendly layout; and
- (e) A final question which invites comments, suggestions and recommendations regarding ways to improve the questionnaire.

24. To promote the quality control and validation of submitted data:
- (a) Information obtained through reporting should be accessible and available to the public through publication on a web site, unless there are specific grounds for confidentiality;
 - (b) Specialized institutions and procedures could be established and used, where necessary, to validate information, especially technical data.
25. Convention bodies should ensure that the information submitted through reporting is compiled and distributed as appropriate. This information should be made available in a user-friendly format.

V. ORGANIZATIONAL ISSUES

26. The issue of financing the operation of the MEAs should be considered during the negotiation stage. Attention should be paid to two types of operations that are financed in a different manner:
- (a) The secretariat functions; and
 - (b) The implementation of work programmes.
- A tailor-made solution should be sought for each particular MEA.
27. There are three types of funding mechanisms used for the ECE environmental conventions and protocols:
- (a) Mandatory contributions, supplemented by voluntary contributions (the EMEP Protocol to the Convention on Long-range Transboundary Air Pollution);
 - (b) Establishment of a trust fund and voluntary contributions (the mechanism is used by the Convention on Long-range Transboundary Air Pollution, the Espoo Convention, the Convention on the Transboundary Effects of Industrial Accidents and the Aarhus Convention);
 - (c) Establishment of a work-plan and identification of a lead country for each activity which covers the costs related to that activity (the Convention on the Protection and Use of Transboundary Watercourses and International Lakes).

28. Each of the three mechanisms presents specific advantages and disadvantages. Mandatory funding mechanisms are a stable and predictable source of financing and in theory ensure a 100 per cent coverage of the required resources, but they are difficult to negotiate, both because they are mandatory and because the national laws of some countries may not allow them to enter into international treaties which require mandatory financing. Funding through voluntary contributions to a trust fund is a more flexible approach, but practice

shows that the budget resources identified by the meetings of the Parties have never been fully covered. Financing through voluntary contributions may involve the use of scales of assessments, including the United Nations scale of assessments, and the “shares” approach.⁴ Establishing a work-plan and identifying a lead country for specific activities eases the burden on the secretariat, but raises the question of funding of activities for which there is no lead country.

⁴ Under the “shares” approach, the budget of the activities is divided into a number of equal shares and Parties, Signatories and others are invited to contribute an amount corresponding to one or more shares or parts of a share. This approach is proposed for adoption under the Aarhus Convention.

MEA Policy Life Cycle

