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Draft - Operating rules of the Implementation Committee

Preamble

The Second Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context decided to establish an Implementation Committee for the review of compliance by the Parties with their obligations under the Convention, with a view to assisting them fully to meet their commitments (decision II/4). The Third Meeting of the Parties decided to revise the structure and functions of the Committee and the procedures for review of compliance (decision III/2).

These operating rules guide the Implementation Committee in the execution of its functions and they provide more detail on how the Committee should operate within its structure and functions. The Committee considers that the rules are needed to facilitate its work. The rules incorporate decisions made by the Committee in its meetings and reflected in their reports. It is intended that the rules promote consistency, predictability, credibility, transparency, accountability and efficiency in the work of the Committee, particularly with regard to procedures for the review of compliance. It is also intended that the rules will provide a flexible means of adapting the Committee's mode of operation in the light of its experience.

PURPOSES

Rule 1¹

These operating rules should apply to any meeting and to any other conduct of business of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context and should be read together with and in furtherance of the structure, functions and procedures set out in the Appendix to decision III/2 of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context.

Rule 2

The following rules of procedure of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, should apply, mutatis mutandis, to any meeting of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context, except as otherwise provided in the rules set out herein and in the Appendix to decision III/2: rule 3 (Place of Meetings); rules 12 and 13 (Agenda); rules 20 to 22 (Officers); rules 24 and 25(c) (Secretariat); rules 28 and 30 to 35 (Conduct of Business), except rule 32, paragraph 2; and rules 38 to 46 (Voting).

DEFINITIONS

Rule 3

For the purposes of these rules:

- (a) “Convention” means the Convention on Environmental Impact Assessment in a Transboundary Context, adopted at Espoo (Finland) on 25 February 1991;
- (b) “Parties” means Contracting Parties to the Convention;
- (c) “Meeting of the Parties” means the Meeting of the Parties established in accordance with Article 11 of the Convention;
- (d) “Committee” means the Implementation Committee first established by decision II/4 of the Meeting of the Parties;
- (e) “Submitting Party” means one or more Parties that have concerns about another Party’s compliance with its obligations under the Convention and accordingly bring a submission before the Committee in accordance with paragraph 5 (a) of the Appendix to decision III/2 of the Meeting of the Parties;
- (f) “Parties involved” means the Party whose compliance with its obligations under the Convention is in question and, as appropriate, the submitting Party;
- (g) “Chair” and “Vice-Chair” mean, respectively, the chairperson and the vice chairperson elected in accordance with rule 6 and with paragraph 1 (a) of the Appendix to decision III/2;
- (h) “Member” means a member of the Committee appointed in accordance with paragraph 1 of the Appendix to decision III/2 or a replacement appointed in accordance with of rule 4;
- (i) “Secretariat” means, in accordance with Article 13 of the Convention, the Executive Secretary of the United Nations Economic Commission for Europe;
- (j) “Official language” means one of the official languages of the United Nations Economic Commission for Europe: English, French and Russian.

MEMBERS

Rule 4²

1. The Meeting of the Parties should elect Parties for serving two terms in the Committee. Each Party elected by the Meeting of the Parties should appoint a member of the Committee for two terms. The term of office of a member shall commence with the appointment by a Party. This paragraph should apply without prejudice to the right of a Party elected by the Meeting of the Parties to appoint in exceptional cases a permanent replacement for that member.

2. Members are expected to participate in every meeting of the Committee. If in exceptional cases a member is unable to participate in a meeting of the Committee, the respective Party should make all efforts to provide a suitable replacement of that member for the meeting of the Committee, informing the Chair and the secretariat accordingly well in advance of the meeting.
3. Each member should ensure the confidentiality of information in accordance with these rules.

Rule 5

1. Each member should, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflict of interest. Where a member finds himself or herself faced with a direct or indirect conflict of interest, that member should bring the conflict of interest to the attention of the Committee before consideration of that particular matter. The concerned member should not participate in the elaboration and adoption of a finding or recommendation of the Committee in relation to that matter.
2. A member that represents a Party in respect of which a submission is made or which makes a submission should be entitled to participate in the consideration by the Committee of that submission but should not participate in, or be present during, the preparation and adoption of any part of a report, finding or recommendation of the Committee that relates to that submission.³ This paragraph should be applied mutatis mutandis in case of a Committee initiative.
3. The members and the secretariat might accept invitations to present the Convention's compliance mechanism at appropriate events, such as conferences and workshops.

OFFICERS

Rule 6

1. The Committee should elect a Chair and a Vice-Chair for one term.⁴ They should serve in those capacities until their successors are elected. Chair and Vice-Chair could be re-elected. If an officer resigns during, or is unable to complete, his or her term of office, the Committee should elect a successor until the end of the term.
2. In case a Party intends to provide a permanent replacement for a member elected as a Chair or Vice-Chair it should notify the Committee well in advance in order to allow a new election of the respective officer.
3. No officer should serve for more than two consecutive terms.

MEETINGS⁵

Rule 7⁶

1. At each meeting, the Committee, taking into account the current workplan adopted by the Meeting of the Parties, should set the indicative date for the opening and the duration of its next meeting.
2. The Committee should decide on the date, duration and venue of its meetings having regard to the budget adopted by the Meeting of the Parties. If the Committee considers necessary for the execution of its functions the holding of meetings for which no budget has been adopted by the Meeting of the Parties, it should first ensure that the necessary additional funding is available.

Rule 8

The secretariat should notify all members of the dates and venue of a meeting at least four weeks before the meeting is due to take place.

AGENDA

Rule 9

In agreement with the Chair, the secretariat should prepare the provisional agenda of each meeting. The provisional agenda should include items arising from the Committee's functions as specified by the Meeting of the Parties and other matters related thereto. The provisional agenda for each meeting should indicate which items are closed to the public in accordance with rule 17, paragraph 1.

Rule 10

To the extent possible, the provisional agenda should be distributed by the secretariat to all members at least four weeks before the meeting takes place. Other documents, prepared by the secretariat or by members, should be distributed, to the extent possible, at least two weeks before the meeting begins.

PROCEDURES FOR SUBMISSIONS⁷

Rule 11

1. Generally, the Committee should not begin the formal discussion on a matter at any meeting that takes place before any requested reply has been received from the Party whose compliance is in question or the applicable deadline for replying has passed. This paragraph should be applied mutatis mutandis in case the Committee requests additional information from the Submitting Party.
2. When it is known that the Committee will discuss the matter of any submission at a particular meeting, the secretariat should notify the Parties involved that the matter will be discussed and of their right to participate in the discussion and to present to the Committee information and opinions on the matter under consideration.

3. Generally, the Parties involved should present any new substantial information to the Committee through the secretariat at least two weeks in advance of the meeting at which the matter will be discussed.

Rule 12⁸

1. The Committee should prepare draft findings and recommendations in closed session, taking into account, inter alia, any submission, reply, corroborating and supporting information and presentations to the Committee by the Parties involved. The Committee should start by considering and drawing appropriate conclusions as to whether or not the Party concerned is in compliance. It might distinguish at this point between failure to establish the necessary implementing measures and failure to apply such measures.
2. If the Committee provisionally finds that the Party whose compliance is in question is not in compliance, it should then consider and agree upon possible recommendations to the Meeting of the Parties, recalling that the present compliance procedure is non-adversarial and assistance-orientated. Possible recommendations to bring about compliance might include:
 - (a) Recommendations to the Party concerned on what legislation, procedures or institutions require strengthening and how;
 - (b) A recommendation to the Party concerned to submit to the Committee a strategy, with time schedule, for action to bring about compliance, and to report to the Committee on its implementation of the strategy;
 - (c) A recommendation to the Meeting of the Parties, and to potential donors, to provide assistance to the Party concerned through national or subregional workshops, training, seminars or technical assistance;
 - (d) A recommendation to the Meeting of the Parties to issue a declaration of non-compliance or a caution; or
 - (e) In exceptional circumstances, a recommendation to the Meeting of the Parties to suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention.⁹

Rule 13¹⁰

1. Once prepared, the draft findings and recommendations should be transmitted to the Parties involved inviting them to comment (or make representations) within a reasonable deadline, and to submit their comments through the secretariat. The draft findings and recommendations should not be publicly available at this stage. If possible and if necessary to help the Parties involved to comment, the Committee might arrange for the draft findings and recommendations to be translated into another official language.
2. Within two weeks of receiving any comments, the secretariat should transmit the comments to the Committee and the other Parties involved, unless the Party providing the

comments requested otherwise, in which case those comments should be forwarded only to the Committee.

3. At its meeting following the deadline for comments, the Committee should review and finalize the draft findings and recommendations taking into account the comments received. The findings and recommendations should be prepared as an addendum to the report of the meeting (i.e. as an official document), and transmitted to the Parties involved and to the Meeting of the Parties.

Rule 14¹¹

Pending consideration by the Meeting of the Parties, with a view to addressing compliance issues without delay, the Committee might:

- (a) Provide advice and facilitate assistance to a Party whose compliance is in question regarding its implementation of the Convention, in consultation with that Party;
- (b) Make recommendations to a Party whose compliance is in question, subject to agreement with that Party.

PROCEDURES FOR COMMITTEE INITIATIVES¹²

Rule 15

1. The sources of information by which the Committee might become aware of a possible non-compliance could be:
 - (a) Parties' work under the Convention; and
 - (b) Any other source.
2. In determining whether to begin a Committee initiative, in accordance with paragraph 6 of the Appendix to decision III/2, the Committee should take into account, inter alia, the following:
 - (a) The source of the information is known and not anonymous;
 - (b) The information relates to an activity listed in Appendix I to the Convention likely to have a significant adverse transboundary impact;
 - (c) The information is the basis for a profound suspicion of non-compliance;
 - (d) The information relates to the implementation of Convention provisions; and
 - (e) Committee time and resources are available.
3. The Committee should consider the information on a non-discriminatory, non-arbitrary and unbiased basis.
4. Rules 11 to 14 should be applied mutatis mutandis in case of a Committee initiative.

PUBLICATION OF DOCUMENTS AND INFORMATION

Rule 16¹³

1. The provisional agenda, together with related official documents (other than confidential items), of a meeting of the Committee should be publicly available on the Convention website.
2. Meeting reports, together with other related official documents (other than confidential items), should be publicly available on the Convention website once agreed by the Committee.
3. Discussion papers prepared by the secretariat or by members for meetings of the Committee should not be publicly available unless the Committee decides otherwise.
4. Submissions and related documents should not be publicly available on the Convention website, but the secretariat should prepare a short summary of each submission (including in particular the names of the Parties involved, the date of the submission, and the name and type of the activity in question). This short summary should be publicly available on the Convention website once agreed by the Committee. Apart from this short summary, working documents and further information related to specific submissions should not be published and their contents should be treated as confidential if requested. This paragraph should be applied mutatis mutandis in case of a Committee initiative.

PARTICIPATION IN MEETINGS OF THE COMMITTEE

Rule 17¹⁴

1. Meetings of the Committee should be open to observers (other Parties, States, bodies, agencies and the public), unless the Committee decides otherwise. Parts of meetings dealing with specific submissions relating to compliance should not be open to observers, unless the Committee and the Party whose compliance is in question agree otherwise. Observers should register with the secretariat in advance of each meeting.
2. A Party in respect of which a submission is made or which makes a submission should be entitled to participate in, or be present during, the consideration by the Committee of that submission, but should not take part in the preparation and adoption of any report, finding or recommendation of the Committee.
3. This rule should be applied mutatis mutandis in case of a Committee initiative.

DECISION-MAKING

Rule 18¹⁵

1. The Committee should make every effort to reach its decisions by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, any other decision should, as a last resort, be taken by a majority vote of the members present and voting, if at least five members are present. For decision-making each member should

have one vote. Where consensus is not possible, the report should reflect the views of all members.

2. Without prejudice to rule 19 for the purposes of these rules, the phrase “members present and voting” means members present at the meeting at which voting takes place and casting an affirmative or negative vote. Members abstaining from voting should be considered as not voting.

Rule 19

In between meetings electronic means of communication might be used by the members for the purpose of decision-making and of conducting informal consultations on issues under consideration. Decisions could only be taken by electronic means of communication, if the issue is urgent, no member opposes using such means in a particular case and all eight members participate in decision-making by submitting to the Chair and the secretariat their vote or informing on abstaining from voting. Any decisions taken by electronic means of communication should be reflected in the report of the meeting of the Committee that follows the taking of the decision.

LANGUAGE

Rule 20

1. The working language of the Committee should be English. The secretariat, for meetings of the Committee held at the United Nations Office at Geneva, or the host country, for meetings held elsewhere, might arrange interpretation in one of the other official languages, if needed and agreed by the Committee.
2. The Committee might allow members to be accompanied by their own interpreters at their own cost. Members are responsible for ensuring that their own interpreters ensure the confidentiality of information in accordance with these rules.
3. Communication by electronic means and informal Committee papers should be in English. Official documents of the meetings should be drawn up in English and translated into the other official languages.

Rule 21

A submission from a Party, the reply and further documents and information should be in English.

AMENDMENTS TO THE OPERATING RULES

Rule 22

Any amendment to these rules shall be adopted by consensus by the Committee and submitted to the Meeting of the Parties for consideration and approval. These rules shall be amended to reflect, as necessary, any amendment to decision III/2.

OVERRIDING AUTHORITY OF THE CONVENTION AND DECISION III/2

Rule 23

In the event of a conflict between any provision in these rules and any provision in the Convention or decision III/2, the provisions of the Convention or decision III/2 shall prevail.

¹ The Committee should refer here to paragraph 4 of the Appendix to decision III/2.

² The Committee should refer here to the first four sentences of paragraph 1(a), and to paragraph 1(b), of the Appendix to decision III/2.

³ The Committee should refer here to paragraph 10 of the Appendix to decision III/2.

⁴ The Committee should refer here to the fifth sentence of paragraph 1(a), and to paragraph 1(b), of the Appendix to decision III/2.

⁵ The Committee should refer here to the second sentence of paragraph 2 of the Appendix to decision III/2.

⁶ The Committee should refer here to the first sentence of paragraph 2 of the Appendix to decision III/2.

⁷ The Committee should refer here to paragraphs 5(a), 5(b) and 7 of the Appendix to decision III/2.

⁸ The Committee should refer here to the second sentence of paragraph 9 of the Appendix to decision III/2.

⁹ See Article 60 of the Convention on the Law of Treaties (Vienna, 1969), which provides for the termination or suspension of the operation of a treaty as a consequence of its breach:

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.
2. A material breach of a multilateral treaty by one of the parties entitles:
 - (a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:
 - (i) in the relations between themselves and the defaulting State, or
 - (ii) as between all the parties;
 - (b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;
 - (c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.
3. A material breach of a treaty, for the purposes of this article, consists in:
 - (a) a repudiation of the treaty not sanctioned by the present Convention; or
 - (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.
4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.
5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

¹⁰ The Committee should refer here to the second sentence of paragraph 9 of the Appendix to decision III/2.

¹¹ The Committee should refer here to paragraph 11 of the Appendix to decision III/2.

¹² The Committee should refer here to paragraphs 6 and 7 of the Appendix to decision III/2.

¹³ The Committee should refer here to the third sentence of paragraph 2 and to paragraph 8 of the Appendix to decision III/2.

¹⁴ The Committee should refer here to paragraphs 3 and 9 of the Appendix to decision III/2.

¹⁵ The Committee should refer here to paragraphs 9, 11 and 12 of the Appendix to decision III/2.