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ECONOMIC COMMISSION FOR EUROPE

COMMITTEE ON ENVIRONMENTAL POLICY

Working Group for the preparation
of a draft convention on access
to environmental information and
public participation in
environmental decision-making

REPORT OF THE THIRD SESSION

1. The third session of the Working Group for the preparation of a draft convention on access to environmental information and public participation in environmental decision-making took place in Geneva from 11 to 13 December 1996.
2. The meeting was attended by delegations of: Albania; Armenia; Austria; Belgium; Bulgaria; Croatia; Czech Republic; Denmark; Estonia; Finland; France; Georgia; Germany; Hungary; Ireland; Italy; Kazakstan; Kyrgyzstan; Latvia; Lithuania; Netherlands; Norway; Poland; Portugal; Romania; Russian Federation; Slovenia; Spain; Switzerland; Turkey; Ukraine; United Kingdom; and Uzbekistan.
3. The session was attended by representatives of the Commission of the European Communities.
4. Representatives of the United Nations Environment Programme (UNEP) and the United Nations Industrial Development Organization (UNIDO) also attended.
5. A representative of the Council of Europe also attended.

6. The following non-governmental organizations were represented: Environmental NGOs Coalition; International Council of Environmental Law (ICEL); Regional Environmental Center for Central and Eastern Europe (REC); World Conservation Union (IUCN); and World Wide Fund for Nature (International)(WWF).
7. The Working Group adopted the agenda as contained in document CEP/AC.3/5 on the understanding that agenda item 2 would be preceded by an item on general information relevant to its work.
8. The Working Group was informed of the progress made within the European Community to obtain a mandate for the Community to participate in the negotiations for the Convention. Written comments by the delegation of Georgia on the draft elements as included in document CEP/AC.3/R.1 were made available.
9. The Chairman recalled the decision by the Working Group at its second session (CEP/AC.3/4, para. 16) to convene an informal meeting in advance of the third session. Two separate groups had prepared options with regard to the definition of "environmental decision-making" and article 5 and the definition of "environmental information" and articles 3 and 4. Mr. J. Jendroska (Poland) introduced the report of the group which had considered the definition of "environmental information" and articles 3 and 4 (see annex I). Mr. A. McGlone (United Kingdom) introduced the report of the group which had considered the definition of "environmental decision-making" and article 5 (see annex II). A number of drafting suggestions for this definition made by members of this group are included in annex III. The Working Group decided to consider first the definition of "environmental information" since the wording of this definition might also affect articles other than articles 3 and 4.
10. Delegations taking part in the discussion on the definition of "environmental information" made proposals for its content. It was considered that the following elements should be covered by such a definition: human health and safety, bio-diversity, flora, fauna, soil, air, water, climate, natural resources, noise, radiation, land, protected landscapes, physical planning, land use, historic and cultural monuments or natural and cultural heritage and built structures, socio-economic conditions resulting from environmental change, biosphere, genetically modified organisms, outer space, waste, deep sea bed and chemicals. It was suggested that these elements should be grouped into more general categories. Two delegations held that an enumeration of such elements was not needed and that it should be left to the national legislation of each Party to the Convention to identify the elements which would be covered by the provisions of this convention. One of these delegations stated that it would present its position in writing to the Working Group.
11. The Working Group considered that it might not be appropriate to include into the definition of "environmental information" issues related to proposed legislation, programmes, plans, policies, negotiated voluntary agreements, environmental programmes or economic or financial analysis used in environmental decision-making, as these issues might be best linked to environmental decision-making. However, it was agreed to leave this issue open until the discussion on "environmental decision-making" and article 5 had taken place and, if necessary, to return to the definition of "environmental

information" at that point. A small drafting group prepared a revised definition of "environmental information", as included in annex VIII to the present report, for further consideration at a later stage without prejudice to the position that delegations might take at a later stage. During the discussion of the revised definition of "environmental information", some delegations indicated their preference for option 1, others for option 2. Certain delegations expressed their reservations regarding some of the wording. The Working Group also discussed article 3. It was mentioned that this article would have to include a short time-frame for a response and a longer time-frame for the provision of the information. The Working Group agreed that this approach would provide the basis for the further discussion on this issue at its next session.

12. The Working Group also considered the definition of "environmental decision-making" and article 5. It was agreed that the definition or the article should address the various stages of the procedures, different types of decisions, whether a threshold should be included, with or without an annex which could provide further details, and whether or not a reference to the national regional and local level should be maintained. Delegations taking part in the discussion expressed their opinion on these issues. The Working Group reached a common understanding that the types of decisions should be differentiated into general and specific decisions. The general decisions would include decisions related to law-making and rule making; decisions of a general nature related to policies, plans and programmes; and decisions of a general nature related to voluntary agreements and/or covenants. The specific decisions would include decisions of a specific nature related to policies, plans and programmes; decisions of a specific nature related to voluntary agreements and/or covenants; and decisions related to licensing and permitting procedures. International instruments, and implementation, monitoring and enforcement, would fall into those two major groups of decisions. It was also suggested that the stages in which public participation would take place as well as the question of a threshold (e.g. "decisions which may have a significant impact on the environment") should be considered. The Working Group agreed to use as a basis for its further deliberations revised texts for article 5 as included in annexes IV through VII to the present report without prejudice to the position that delegations might take at a later stage.

13. The Working Group unanimously elected Mr. Y. Pelovsky (Bulgaria) and Mr. J. Jendroska (Poland) as Vice-Chairpersons.

14. The Working Group was pleased to note that, thanks to the generous support from the Government of the Netherlands, many experts from countries in transition were present at the third session. It was agreed that an informal meeting would be held on 17 and 18 February 1997. The Working Group recalled that the fourth session would take place from 19 to 21 February 1997 at the Palais des Nations, Geneva. The Chairman thanked the International Council of Environmental Law (ICEL) for the support provided at this stage and for the kind offer to assist the Working Group in its further work.

15. The Working Group adopted its report on Friday, 13 December 1996.

Annex I

1. The Environmental NGOs Coalition submitted for consideration some "Comments on article 3 and associated definitions" which take account of proposals made by other countries previously. The Group agreed to work with this document, the draft elements and the reports of the previous sessions.

2. The Environmental NGOs Coalition's proposal includes two options concerning the definition of "environmental information":

Option 1: Consists of a definition of environment and of environmental information (supported by the delegations of Croatia, Hungary and the United Kingdom).

Option 2: Consists of a revised version of the "Draft elements for the convention on access to environmental information and public participation in environmental decision-making" (supported by the delegation of Albania).

Note: The delegation of Ireland chose the first option but thought the second was more practical.

3. Definition of the "environment" (= option 1)

Concerning "human health and safety" some delegations (Germany, United Kingdom) opted for more specific language and referred to the relevant WHO definition.

The delegation of Albania wanted to add the word "strategies" in the definition.

The delegation of the United Kingdom expressed its reservation about the Environmental NGOs Coalition's proposal to add the words "outer space" in the definition.

The delegation of the United Kingdom wanted to delete the words "cultural and natural heritage, historical monuments or other built structures, socio-economic conditions resulting from any of these factors".

The delegation of Germany requested that this definition be redrafted to separate the elements "noise" and "radiation". (The Environmental NGOs Coalition volunteered to redraft this definition).

The delegation of Croatia wanted to delete the brackets after the word "biosphere". The delegation of the United Kingdom supported this and proposed in addition to delete the word "biosphere". The Environmental NGOs Coalition disagreed with this last proposal.

All delegations agreed to add in brackets "including drinking-water" after the word water.

4. Definition of "environmental information within option 1".

The major problems here are the words "proposed legislation, programmes, plans, policies, activities or measures..".

Some delegations liked to have a clarification of the words "proposed policies and legislation" as mentioned in the Environmental NGOs Coalition's proposal.

The delegation of the United Kingdom wanted to delete article 1 (iii) bis (c) completely and wanted to delete the words "legislation, programmes, plans and policies" in article 1 (iii) bis (b) of the Environmental NGOs Coalition's proposals.

Note: The Environmental NGOs Coalition promised to come up with a revised version.

The delegation of Albania wanted to keep the provisions (iii) bis (b) and (iii) bis (c) of article 1 of the said proposal.

Some delegations wanted to add the word "strategies" to the definition.

The delegation of the United Kingdom preferred to change the words "negotiated agreements" into "voluntary agreements".

5. Comments on article 3 of the draft convention.

Paragraph 1

The Environmental NGOs Coalition proposed to add to this paragraph the words "in response to a request for environmental information" (agreed by all delegations).

It also proposed to add to this paragraph the words "copies of". The delegation of the United Kingdom agreed but suggested replacing the words "copies of the actual documentation" by "copies of any actual documentation".

The delegation of the Russian Federation objected in principle to the access to documentation.

In response to a Lithuanian concern, the Environmental NGOs Coalition suggested adding the words "documents in the possession of public authorities".

The Environmental NGOs Coalition's proposal suggested adding the word "such" in the introduction to read "and make available such environmental information...."

- Subparagraph 1(a)

The Environmental NGOs Coalition proposed to add the word "poverty". No other delegation supported this proposal.

- Subparagraph 1 (b)

The Environmental NGOs Coalition proposed to change the word "proved" by "stated". No objection was made to this proposal.

- Subparagraph 1 (c)

The Environmental NGOs Coalition proposed to delete this part of paragraph 1 and proposed a new paragraph on time limits (paragraph 2 bis (b) of its proposal). There was no support for this subparagraph by the other delegations. It was accepted that there would be three options:

1. A time limit as mentioned in the draft convention;
2. A time limit as mentioned in the EC directive 90/313;
3. Instead of paragraph 2 bis (b), the NGOs Coalition promised to come up with a new proposal as a third option.

Paragraph 2

The NGOs Coalition proposed to change the introduction as follows: "... is outweighed by the interest"

No objection was made to this proposal.

It also proposed to reletter the paragraph in order to avoid grammatical problems.

The NGOs Coalition proposed to replace in the introduction of this paragraph the words "it adversely affects" by "disclosure would adversely affect" (paragraph 2 (a) of its proposal).

No objection was made to this proposal.

- Subparagraph 2 (a)

No agreement was reached about the NGOs Coalition's proposal to delete the words "international relations" (2 (a) (i) of its proposal).

The delegation of the United Kingdom raised here the general point that exceptions should be invoked only if there was evidence of harm in releasing of the information.

No objection was made to the NGOs Coalition's proposal to change the words "national defence" back to "(b) public security". (2 (a)(ii) of the proposal).

- Subparagraph 2 (b)

The NGOs Coalition proposed to add the words "public security" with "national defence and" (2 (a) (ii) of its proposal).

- Subparagraph 2 (c)

The NGOs Coalition proposed to redraft the entire original text. Basically no objection was made to this. The delegation of Ireland proposed to maintain the words "prejudice the course of justice" (2 (a) (iii) of the NGOs Coalition's proposal).

- Subparagraph 2 (d)

The delegation of Belgium proposed to delete "including intellectual property".

The delegation of the United Kingdom wanted to delete "unless the requested information relates to emissions on impacts on the environment".

The delegation of Ireland foresaw problems with defining "impact on the environment".

The delegation of the Russian Federation proposed to delete "emissions".

- Subparagraph 2 (e)

No objections were raised.

- Subparagraph 2 (f)

The NGOs Coalition proposed to delete this subparagraph.

The delegation of the United Kingdom wanted to keep it.

- Subparagraph 2 (g)

The NGOs Coalition proposed to add to this subparagraph the words "the information requested contains ...". No objection was made (2 (b) of its proposal).

- Subparagraph 2 (h)

The NGOs Coalition proposed to delete this subparagraph. This was supported by Ireland and other delegations because it would be illogical to keep this subparagraph at this place.

- Subparagraph 2 (i)

No amendments were proposed.

- Subparagraph 2 (j)

The NGOs Coalition proposed to add to this subparagraph the words "of a public authority" (2 (d) of its proposal). This proposal was accepted by all delegations.

NGOs Coalition's Proposal for a new paragraph qualifying paragraph 2

There was no objection to this subparagraph 2 bis A and it was decided to keep it as a possible option

Paragraph 3

Three options have been suggested:

1. The text of the draft convention;
2. The text of the draft convention after deleting the words "reasonably expected to know" (supported by the delegation of Germany and Ireland);
3. The text of the NGOs Coalition's proposal.

Paragraph 4

The NGOs Coalition proposed to add the words "is manifestly unreasonable". This proposal was put forward as a possible option.

Paragraph 5

Typographical error corrected: delete second "shall". This correction was agreed by all delegations.

Paragraph 6

- Some delegations suggested that the time-limit should be the same throughout the entire convention.

- Delegations agreed that a wording should be found (possibly based on the Netherlands legislation) specifying in which circumstances refusal should be in writing.

Paragraph 7

A delegation proposed to merge subparagraphs (a) and (b). This was not supported by the other delegations.

- Subparagraph. 7 (a)

Two options were suggested:

1. To change the first sentence by linking "reasonable" with the word "charge" and deleting the second sentence.
2. To consider some clarification.

- Subparagraph 7 (b)

There was general agreement that the text of the draft convention seemed to be a good option. The delegation of the United Kingdom proposed a clarification of the language of this subparagraph.

- Subparagraph 7 (c)

All delegations agreed with the idea of not charging for allowing people to just look at documents, but it required more clarification (what is a public register?)

- Subparagraph 7 (d)

It was proposed to delete the words "at low cost format" and to find a better place in the convention for this provision (not with the provisions concerning charges).

Paragraph 8

The NGOs Coalition's proposal without the time-reference was accepted as an option.

Paragraph 9

The NGOs Coalition's proposal was kept as an option.

Annex II

Types of decision

1. The group started by considering which decisions should fall within the scope of the definition in article 1 (iv) of the convention. It was agreed that the definition should not relate to judicial decisions. The Group then discussed the various types of decision described in a memorandum prepared by the Centre for International Environmental Law dated 7 December 1996.

2. Whilst the group considered that it might be difficult to distinguish between decisions about proposed projects that may affect the environment and decisions made in licensing and permitting processes (both categories of decision are referred to as "specific decisions" in the rest of this annex), it was considered that decisions in this field could usefully be covered by the convention.

3. The group agreed that decisions related to law making and rule making (both categories of decision are referred to as "general decisions" in the rest of this annex) were fundamentally different to specific decisions, and that the convention should not therefore cover general and specific decisions in the same way. There was, however, no agreement as to how general decisions could be covered:

(a) Some members of the group considered that general decisions should not be covered at all;

(b) Others considered that general decisions should be covered by provisions that were only morally binding;

(c) Others considered that the convention should contain legally binding provisions relating to general decisions.

4. The group also considered decisions relating to policies, plans and programmes that may affect the environment. It was felt that such decisions could differ in character, and that some decisions falling into this category should be treated, for the purposes of the convention, as if they were general decisions and others as if they were specific decisions.

5. The group moved on to consider decisions relating to monitoring, implementation and enforcement. It was considered, for the time being, that there was a possibility that the provisions in the convention relating to access to environmental information, access to justice and public participation in other decision-making processes together with the general implementation of citizens' democratic rights might enable adequate participation in monitoring, implementation and enforcement. It was noted, however, that work on other parts of the convention was not finalized, and that it was therefore not possible to be completely certain that other provisions in the convention would cover this field. It might therefore be necessary to return to this category of decision later.

6. The group could not, for the time being, identify any reason why enterprise restructuring decisions should be dealt with as a separate category of decision.

7. Some members of the group considered it important to promote appropriate public participation in international procedures but no one considered for the time being that there should be express legally binding provisions relating to public participation in the development of international instruments and policies.

8. The group finally considered decisions resulting in voluntary agreements and covenants, some of which would be of a general nature, and others of a specific nature, and would be regulated accordingly.

Article 1 (iv)

9. The group considered a number of alternative approaches to article 1 (iv).

10. Some considered that it might be appropriate to define "environmental decisions", "environmental decision-making procedures" or "environmental decision-making processes" rather than "environmental decision-making".

11. There was a debate about whether article 1 (iv) should contain a threshold. Some proposed that the threshold should be "a significant impact on the environment". There was a suggestion that "significant" might be explained with reference to criteria like those set out in appendix III to the Espoo Convention. It was also suggested that "appreciable" should substitute "significant". Others thought there should be no threshold.

12. It was suggested that the subject matter of article 1 (iv) should be identified by reference to a list, by national legislation or by Parties' designation. The following points were also made:

(a) The definition could be inclusive or exclusive;

(b) The definition might have to distinguish between different categories of decision;

(c) There should be express provision to the effect that only decisions affecting the environment were covered; and

(d) It should be specified that only decisions by the executive branch of government were covered.

Article 5

13. It was suggested that Article 5 should contain separate provisions relating to general and specific decisions.

14. The provisions relating to specific decisions could cover:

- (a) The informing of the public about a proposed activity and a connected decision;
- (b) The fixing of a time-frame for the relevant procedure;
- (c) Early involvement of the public;
- (d) Specific arrangements for the consultation of/participation by the public;
- (e) Due account to be taken of the views of the public;
- (f) Provision for public review of/ appeal against the decision; and
- (g) Provision to the effect that members of the public could participate without having to show an interest. Alternatively, there could be a provision to the effect that only those members of the public with an appropriate interest could participate. It was suggested that whether the public should have to show an interest was directly related to the question of whether there should be a threshold in article 1 (iv).

It was observed that article 5 might have to distinguish between different categories of specific decisions (e.g. between decisions on new projects and decisions on existing projects).

15. Turning to general decisions, it was considered that if the convention covered such decisions, there might be:

- (a) Provision for the public (i.e. either the public at large or the public with a sufficient interest) to be notified of the general decision in a draft;
- (b) A requirement that the public should have an opportunity to comment;
- (c) An obligation to ensure that the decision-making procedure was transparent.

It was also suggested that if article 5 were not to cover general decisions, there could be appropriate recommendations in an annex or a free-standing recommendation relating to such decisions.

16. Finally, the point was made that there might be some merit in restructuring article 5 so that:

- (a) General provisions; and
- (b) Specific and concrete provisions

were separated and grouped together.

Annex III

**PROPOSALS TO REPLACE THE EXISTING DEFINITION
OF "ENVIRONMENTAL DECISION-MAKING" AS INCLUDED IN DOCUMENT CEP/AC.3/R.1**

Denmark

"Decision" means an (executive) decision taken by a public authority, excluding decisions taken by a public authority acting in a judicial capacity.

Italy

"Environmental decision-making" means a procedure at national, regional or local level for a public authority to authorize or undertake policies, plans or programmes or a proposed activity which may have a significant impact on the environment.

Romania

"Environmental decision-making" means a process and national procedures for public authorities in order to promote and ensure the effective public participation in preventing and solving environmental problems excluding decisions taken by courts or other bodies acting in a judicial capacity.

Russian Federation

"Environmental decision-making" means a procedure for a public authority to implement environmental decisions at national, regional or local level as defined by the legislation of a State party. This shall not include legislative and judicial decisions.

Annex IV

**PROPOSAL BY ITALY TO REPLACE THE EXISTING ARTICLE 5 AS INCLUDED
IN DOCUMENT CEP/AC.3/R.1 BY THE FOLLOWING TEXT**

Article 5

Public participation in decision-making concerning a proposed activity

1. Each Party shall take the necessary legal, administrative and other measures to implement the provisions of this article, including , with respect to proposed activities listed in appendix I, the establishment of a procedure that permits public participation in the decision-making process to authorize or undertake the proposed activities.
2. Each Party shall ensure that the public who is likely to be affected by or who has an interest in the decision-making, is notified by public notice or individually, as appropriate, early in the decision-making procedure. This notification shall contain, inter alia:
 - (a) Information on the proposed activity on which a decision will be taken, including any available information on its possible impact;
 - (b) The nature of the possible decision; and
 - (c) Relevant information regarding the environmental decision-making procedure, including information on the commencement of the procedure, the possibilities for the public to participate, an indication of the time schedule for transmittal of comments and an indication of the public authority where relevant information can be obtained.
3. Each Party shall ensure that the public participation procedures in accordance with the provisions of this Convention shall include reasonable time-frames for the different phases of the public participation procedures.
4. Each Party shall take the necessary legal, administrative and other measures to ensure that public participation commences early in the decision-making procedure, at a stage when options and alternatives are still open and effective public participation can take place.
5. Each Party shall ensure that the relevant environmental information is provided to the public as soon as it becomes available and in all circumstances before the start of the public participation procedure in decision-making. The relevant environmental information shall include as a minimum the information described in appendix II.
6. Each Party shall take the necessary legal, administrative and other measures to ensure that public participation in decision-making arranges for the public:

- (a) To be heard;
- (b) When appropriate, to propose alternatives, including the no-action alternative;
- (c) To make objections;
- (d) To submit comments on the proposed activity before the decision is taken;
- (e) To submit comments in written form; or to express its views at a public hearing of which it has been properly notified, as appropriate;
- (f) To propose measures to mitigate significant adverse impacts; and
- (g) To propose measures to monitor the impacts of the decision.

The arrangements for public participation may be based on the methods listed in appendix III.

7. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation, and that the decision includes the extent to which comments and objections made by the public have been taken into account.

8. Each Party shall ensure that, after the decision has been taken, the public has recourse to administrative and/or judicial proceedings in order to challenge acts or failures to act by public officials and to appeal against the decision.

9. Each Party shall ensure that the activities of the public involved in public participation in environmental decision-making in accordance with the provisions of this Convention are not hindered in any way.

Article 6

Public participation in the decision-making concerning an existing activity

1. Each Party shall ensure on reconsidering and, where necessary, updating the operational conditions for existing activities listed in appendix I that public participation is permitted in the decision-making process in accordance with the requirements of article 5, paragraphs 2, 3, 6, 7, 8 and 9.

2. Each Party shall ensure that the relevant information is provided to the public as soon as it becomes available and in all circumstances before the start of the public participation procedure in decision-making. The relevant information shall include the information described in appendix IV.

Article 7

Public participation in the decision-making concerning plans and programmes

1. Each Party shall ensure before the adoption or the submission to the legislative procedure of a plan or programme or before authorizing or undertaking such plan or programme, that public participation is permitted in accordance with relevant provisions of article 5. The relevant environmental information shall include as a minimum the information described in appendix V.

2. For the purposes of this article each Party shall designate the public to be consulted, taking into account the stage of the plan or programme in the decision-making process. Each Party shall ensure the participation of non-governmental organizations as public concerned.

Article 8

Public participation concerning law making or rule making

To the extent appropriate, the Parties shall endeavour to provide opportunities for public participation in the law or rule making procedure or in decision-making concerning policies, plans or programmes that do not fall within the scope of article 7.

Article 9

Where a national environmental impact assessment procedure is in place, articles 5 and 8 will apply to the extent that the public participation obligations set out in them are not fully met in the existing environmental impact assessment procedure.

New definition

For the purposes of this Convention,

(a) "Plan" and "programme"

(i) Refer only to land-use plans and programmes which are subject to preparation and adoption by a competent authority or which are prepared by a competent authority for adoption by an act of legislation, and which contain provisions on the nature, size, location or operational conditions of projects. This definition includes plans and programmes in sectors such as transport (including transport corridors, port facilities and airports), energy, waste management, water resource management, industry (including extraction of mineral resources), telecommunication and tourism;

(ii) Include modifications to existing plans and programmes which have been subject to a formal procedure of adoption, as described in subparagraph (i) above;

Appendix I

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.
2. - Thermal power stations and other combustion installations with a heat output of 300 megawatts or more; and

- Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors 1/ (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kW continuous thermal load).
3. (a) Installations for the reprocessing of irradiated nuclear fuel;
(b) Installations designed:
 - For the production or enrichment of nuclear fuel;
 - For the processing of irradiated nuclear fuel or high-level radioactive waste;
 - For the final disposal of irradiated nuclear fuel;
 - Solely for the final disposal of radioactive waste;
 - Solely for the storage (planned for more than 10 years) or irradiated nuclear fuels or radioactive waste in a different site than the production site.
4. - Integrated works for the initial smelting of cast-iron and steel.
- Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.
5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilization of more than 200 tonnes per year.
6. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:
 - (i) For the production of basic organic chemicals;
 - (ii) For the production of basic inorganic chemicals;
 - (iii) For the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers);

- (iv) For the production of basic plant health products and of biocides;
 - (v) For the production of basic pharmaceutical products using a chemical or biological process;
 - (vi) For the production of explosives.
7. (a) Construction of lines for long-distance railway traffic and of airports 2/ with a basic runway length of 2 100 m or more;
- (b) Construction of motorways and express roads; 3/
- (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 km or more in a continuous length.
8. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes;
- (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes.
9. Waste disposal installations for the incineration, chemical treatment or landfill of hazardous waste.
10. Waste disposal installations for the incineration or chemical treatment of non-hazardous waste with a capacity exceeding 100 tonnes per day.
11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
12. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;
- (b) In all other cases, works for the transfer of water resources between river basins where the multiannual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5% of this flow.
- In both cases transfers of piped drinking water are excluded.
13. Waste-water treatment plants with a capacity exceeding 150 000 population equivalent.
14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.
15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
16. Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 mm and a length of more than 40 km.

17. Installations for the intensive rearing of poultry or pigs with more than:
 - (a) 85 000 places for broilers, 60 000 places for hens;
 - (b) 3 000 places for production pigs (over 30 kg); or
 - (c) 900 places for sows.
18. Industrial plants for the:
 - (a) Production of pulp from timber or similar fibrous materials;
 - (b) Production of paper and board with a production capacity exceeding 200 tonnes per day.
19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.
20. Construction of overhead electrical power lines with a voltage of 25 kV or more and a length of more than 15 km.
21. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.
22. Installations or parts of installations used for research, development and testing of new products and processes are not covered by this Convention.
23. The threshold values given below generally refer to production capacities or output. Where one operator carries out several activities falling under the same subheading in the same installation or on the same site, the capacities of such activities are added together.
24. Energy industries:
 - Combustion installations with a rated thermal input exceeding 50 MW;
 - Mineral oil and gas refineries;
 - Coke ovens;
 - Coal gasification and liquefaction plants.
25. Production and processing of metals:
 - Metal ore (including sulphide ore) roasting or sintering installations;
 - Installations for the production of pig-iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour;
 - Installations for the processing of ferrous metals:
 - (a) Hot-rolling mills with a capacity exceeding 20 tonnes of crude steel per hour;
 - (b) Smitheries with hammers the energy of which exceeds 50 kilojoule per hammer, where the calorific power used exceeds 20 MW;
 - (c) Application of protective fused metal coats with an input exceeding 2 tonnes of crude steel per hour.

- Ferrous metal foundries with a production capacity exceeding 20 tonnes per day.
- Installations:
 - (a) For the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes;
 - (b) For the smelting, including the alloyage, of non-ferrous metals, including recovered products, (refining, foundry casting, etc.) with a melting capacity exceeding 4 tonnes per day for lead and cadmium or 20 tonnes per day for all other metals;
- Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process where the volume of the treatment vats exceeds 30 m³.

26. Mineral industry:

- Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or lime in rotary kilns with a production capacity exceeding 50 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day;
- Installations for the production of asbestos and the manufacture of asbestos-based products;
- Installations for the manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day;
- Installations for melting mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tonnes per day;
- Installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day, and/or with a kiln capacity exceeding 4 m³ and with a setting density per kiln exceeding 300 kg/m³.

27. Chemical industry: Production within the meaning of the categories of activities contained in this paragraph means the production on an industrial scale by chemical processing of substances or groups of substances listed in subparagraphs (a) to (f):

(a) Chemical installations for the production of basic organic chemicals, such as:

- (i) Simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic);
- (ii) Oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, esters, acetates, ethers, peroxides, epoxy resins;
- (iii) Sulphurous hydrocarbons;
- (iv) Nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates;
- (v) Phosphorus-containing hydrocarbons;

- (vi) Halogenic hydrocarbons;
- (vii) Organometallic compounds;
- (viii) Basic plastic materials (polymers synthetic fibres and cellulose-based fibres);
- (ix) Synthetic rubbers;
- (x) Dyes and pigments;
- (xi) Surface-active agents and surfactants;

(b) Chemical installations for the production of basic inorganic chemicals, such as:

- (i) Gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride;
- (ii) Acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids;
- (iii) Bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide;
- (iv) Salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate;
- (v) Non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide;

(c) Chemical installations for the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers);

(d) Chemical installations for the production of basic plant health products and of biocides;

(e) Installations using a chemical or biological process for the production of basic pharmaceutical products;

(f) Chemical installations for the production of explosives.

28. Waste management:

- Installations for the disposal or recovery of hazardous waste with a capacity exceeding 10 tonnes per day;
- Installations for the incineration of municipal waste with a capacity exceeding 3 tonnes per hour;
- Installations for the disposal of non-hazardous waste with a capacity exceeding 50 tonnes per day;
- Landfills receiving more than 10 tonnes per day or with a total capacity exceeding 25 000 tonnes, excluding landfills of inert waste.

29. Other activities:

- Industrial plants for the production of:
 - (a) Pulp from timber or other fibrous materials;
 - (b) Paper and board with a production capacity exceeding 20 tonnes per day;

- Plants for the pre-treatment (operations such as washing, bleaching, mercerization) or dyeing of fibres or textiles where the treatment capacity exceeds 10 tonnes per day;
- Plants for the tanning of hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day;
- (a) Slaughterhouses with a carcass production capacity greater than 50 tonnes per day;
- (b) Treatment and processing intended for the production of food products from:
 - (i) Animal raw materials (other than milk) with a finished product production capacity greater than 75 tonnes per day;
 - (ii) Vegetable raw materials with a finished product production capacity greater than 300 tonnes per day (average value on a quarterly basis);
- (c) Treatment and processing of milk, the quantity of milk received being greater than 200 tonnes per day (average value on an annual basis);
- Installations for the disposal or recycling of animal carcasses and animal waste with a treatment capacity exceeding 10 tonnes per day;
- Installations for the intensive rearing of poultry or pigs with more than:
 - (a) 40 000 places for poultry;
 - (b) 2 000 places for production pigs (over 30 kg); or
 - (c) 750 places for sows;
- Installations for the surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating, with a consumption capacity of more than 150 kg per hour or more than 200 tonnes per year;
- Installations for the production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitization.

Notes

1/ Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

2/ For the purposes of this Convention, "airport" means airports which comply with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

3/ For the purposes of this Convention, "express road" means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

Appendix II

INFORMATION REFERRED TO IN ARTICLE 5, PARAGRAPH 5

1. Description of the project, including in particular:
 - A description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases;
 - A description of the main characteristics of the production processes, for instance, the nature and quantity of materials used;
 - An estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.
2. An outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects.
3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
4. A description of the likely significant effects of the proposed project on the environment resulting from:
 - The existence of the project;
 - The use of natural resources;
 - The emission of pollutants, the creation of nuisances and the elimination of waste.A description by the developer of the forecasting methods used to assess the effects on the environment.
5. A description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment.
6. A non-technical summary of the information provided under the above headings.
7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

Appendix III

PUBLIC PARTICIPATION METHODS

A. Written comments

(1) The public has an opportunity to provide written comments on all environmental decisions and any documents prepared in anticipation of any decision-making, including but not limited to draft environmental impact assessments, draft environmental policies, legislation or regulations;

(2) Proper notification in accordance with article 5, paragraph 3, is provided;

(3) Written comments can be submitted in any language of the locally affected communities and in the language of significant minorities;

(4) All written comments are reviewed before the decision is made;

(5) All written comments received from the public are reviewed and taken into account in all environmental decision-making;

(6) All received written comments are made available to the public;
and

(7) The final decision is provided in writing and is accompanied by a justification in the light of the comments received.

B. Public hearings and information briefings

(1) The public especially in the affected area has an opportunity to attend oral hearings regarding the environmental impacts of any decision;

(2) Proper notification in accordance with article 5, paragraph 3 is provided and relevant environmental information is made available prior to the public hearings;

(3) The oral hearings are held in the primary language of the public in the affected area and in the language of any significant minorities;

(4) Informed officials attend all public hearings and information briefings; and

(5) Oral comments made at public hearings are transcribed, reviewed and taken into account in all environmental decisions.

C. Informal consultations

Informal consultations should be open equally to all types of stakeholders, should be conducted transparently, and should be held regularly throughout the decision-making process.

D. Advisory committees

Advisory committees or similar mechanisms will receive continuing advice from members of the public in appropriate circumstances. Any meetings of such advisory committees or other similar mechanisms are open to the public.

E. Direct participation in decisions

Decision-making councils, supervisory boards or similar mechanisms will allow members of the public to join in making environmental decisions, particularly at the local level. Any meetings of such councils, boards or similar mechanisms are open to the public.

F. Citizens' petitions, initiatives and referendums

Fair and transparent procedures for the public to petition the responsible government authority, including the parliament, to take specific measures to protect the environment. The responsible government authority has to respond to a petition. Where appropriate and particularly at the local level, fair and transparent procedures for the public to pass citizens' initiatives and referendums that have the force of law.

Appendix IV

INFORMATION REFERRED TO IN ARTICLE 6

Information on the following matters:

- The installation and its activities;
- The raw and auxiliary materials, other substances and the energy used in or generated by the installation;
- The sources of emissions from the installation;
- The conditions of the site of the installation;
- The nature and quantities of foreseeable emissions from the installation into each medium as well as identification of significant effects of the emissions on the environment;
- The proposed technology and other techniques for preventing or, where this not possible, reducing emissions from the installation;
- Where necessary, measures for the prevention and recovery of waste generated by the installation;
- Further measures planned to comply with the general principles of the basic obligations of the operator as provided for in article 3;
- Measures planned to monitor emissions into the environment.

Appendix V**INFORMATION REFERRED TO IN ARTICLE 7**

Information on the following matters:

- The contents of the plan or programme and its main objectives;
- The environmental characteristics of any area likely to be significantly affected by the plan or programme;
- Any existing environmental problems which are relevant to the plan or programme;
- The environmental protection objectives, established at international level (including objectives established in other plans and programmes in the same hierarchy), which are relevant to the plan or programme and the way in which these objectives and any other environmental considerations have been taken into account during its preparation;
- The likely significant environmental effects of implementing the plan or programme;
- Any alternative ways of achieving the objectives of the plan or programme which have been considered during its preparation (such as alternative types of development or alternative locations for development) and the reasons for not adopting these alternatives;
- The measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects of implementing the plan or programme on the environment;
- Any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information.

Annex V

PROPOSALS BY ROMANIA

Romania considers the draft text as included in document CEP/AC.3/R.1 an excellent working tool, a milestone in environmental decision-making, and would not wish to alter it substantially. It holds that the original structure of article 5 of the draft convention should be maintained, because it is simple and clear. However, it should like to make the following proposals:

Article 5, paragraph 1: for without having to prove an interest substitute without any private interest

Article 5, paragraph 2: for has an interest substitute is interested

Article 5, paragraph 3: the term "reasonable time-frames" has to be clarified.

Article 5, paragrapy 7 (d) and (e) could be merged.

Article 5, paragraph 8: since on several occasions the draft convention refers to two-month deadlines, it would be appropriate to replace "six weeks" by "two months".

If it is deemed necessary to add a list of activities, programmes, projects, etc. to article 5, this should take into account existing national lists, such as that of Romania, or lists included in European Union directives, or combine both.

Annex VI

**PROPOSAL BY THE ENVIRONMENTAL NGOS COALITION AND REC TO STRUCTURE
THE DEFINITION OF "ENVIRONMENTAL DECISION-MAKING"
AND RELATED PROVISIONS IN ARTICLE 5**

1. We agree that the definition should be simple and workable. One way to accomplish this would be to incorporate by reference the types of decisions enumerated and discussed in article 5. This list should be considered inclusive rather than exhaustive in order to ensure that categories of decisions whose impact cannot be predicted at this time may be included under the scope of this convention. This is in line with the precautionary principle embodied in a number of international agreements, including the Treaty on European Union.
2. For example, one textual option for the definition of "environmental decision-making" would be: "a process by which a public authority makes any decision affecting the environment, including but not limited to those decisions and processes addressed in article 5, paragraphs [x] to [y]"
3. Such a definition assumes that the definition of "public authority" makes explicit reference to the location of decision-making at national, regional, and local level. It avoids the use of a threshold due to the difficulties that would arise in identifying the meaning of "significant" or similar qualifiers, accounts for the impossibility of preliminary assessments on the impact of certain decisions, and minimizes the use of annexes.
4. Another option would be to enumerate the types of decisions (inclusively) instead of referring to the article numbers.
5. Finally, we could support the proposal of the Italian delegation so long as the use of explanatory annexes is inclusive rather than exclusive, and includes law-making, rule-making, and enforcement among the listed categories. We urge the drafting group to consider the possibility of including these categories, recognizing that the corresponding public participation requirements may be drafted in a manner which accommodates the different national legal traditions.
6. Article 5 should include the following:
 - (a) General provisions;
 - (b) A list of types of decisions and corresponding public participation requirements, including but not limited to:
 - (i) Projects, licensing, and permitting;
 - (ii) Policies, plans and programmes;
 - (iii) Enforcement;

- (iv) International instruments and policies. [It may not be necessary to include a separate sub-article on this subject, however, the convention must be sufficiently clear that policies developed at the national level for discussion in international forums are included in the scope of the convention and require the same participatory processes as other national policies. Additionally, the convention should include a commitment by the parties to take appropriate measures to promote participation and transparency in international forums. This should not be regarded as an attempt to regulate the proceedings of other international bodies. Rather, it is merely an expression of support for the principles enshrined in their convention in all undertakings of the parties.]

Annex VII

**PROPOSAL BY THE RUSSIAN FEDERATION TO REPLACE THE EXISTING TEXT OF
ARTICLE 5, PARAGRAPHS 1 AND 2, BY THE FOLLOWING TEXT**

1. Each Party shall adopt rules and regulations, recommended practices and procedures with a view to implementing the provisions of this article with respect to activities listed in appendix I [in order to allow public participation in the decision-making process to authorize or undertake such activities].

2. Competent public authorities will make available to the public information on proposed activities listed in appendix I, as early as feasible and practicable in the decision-making process, having in mind, inter alia, the following: (remaining text of article 5 unchanged).

Annex VIII

PROPOSAL FOR A REVISED DEFINITION OF "ENVIRONMENTAL INFORMATION" (ARTICLE 1)

Definition:

[(iii) "Environmental information" means any information in written, visual, aural, electronic or other material form on:

Option 1

(a) Elements of the environment such as biodiversity, flora, fauna [and other biological lifeforms], soil, atmosphere, air, water (including drinking-water), climate, natural resources, land, landscape, sites of natural or cultural interest [, built structures];

Option 2

(a) Elements of the environment, namely air, water, land and biological life;

Subparagraphs (b) and (c) would be the same for both options.

(b) Factors (such as noise, radiation), activities or measures affecting, or likely to affect, the elements referred to in subparagraph (a) above, including administrative measures, [voluntary agreements,] policies, legislation, plans and programmes [,and economic or financial analysis used in environmental decision-making];

(c) Impacts of the environmental elements referred to in subparagraph (a) above and factors, activities or measures referred to in subparagraph (b) above on human health and safety, socio-economic conditions, cultural heritage and quality of life [,including information necessary to assess these impacts such as epidemiological and toxicological data].]