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**ECONOMIC COMMISSION FOR EUROPE**

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

**REPORT OF THE THIRD MEETING**

held in Cavtat, Croatia, from 1 to 4 June 2004  
at the invitation of the Government of Croatia

The third meeting of the Parties to the Convention on Environmental Impact Assessment (EIA) in a Transboundary Context took place in June 2004 in Croatia. It included the first meeting of the Signatories to the Protocol on Strategic Environmental Assessment adopted in May 2003 in Kiev at the 'Environment for Europe' Ministerial Conference. The Meeting adopted guidance on its application, subregional cooperation and public participation, and the results of the first review of the implementation of the Convention. The Meeting also adopted a new work plan and budget for the period up to the fourth meeting of the Parties. The Meeting adopted the Cavtat Declaration and a second amendment to the Convention, which introduces procedures for 'scoping' within transboundary EIA, revises and extends Appendix I to the Convention and provides for a number of refinements to the Convention to improve legal certainty in its application.

## CONTENTS

	<u>Paragraphs</u>
Introduction.....	1 - 4
First general segment .....	5 - 14
I. OPENING OF THE MEETING AND CONSTITUTION.....	5 - 8
A. Opening of the meeting .....	5
B. Constitution of the general segments .....	6 - 7
C. Adoption of the agenda .....	8
II. OUTSTANDING ISSUES .....	9 - 14
A. Work plan until the fourth meeting of the Parties .....	10
B. Budget and financial arrangements for the period until the fourth meeting of the Parties .....	11
C. Date, venue and election of officers for the fourth meeting of the Parties to the Convention.....	12
D. Election of officers for the Meeting of the Signatories to the Protocol.....	13
E. Other business .....	14
High-level segment .....	15 - 19
III. OPENING CEREMONY. ....	15 - 16
IV. THE CONVENTION AND THE PROTOCOL AS INSTRUMENTS FOR DECISION-MAKING IN SUPPORT OF SUSTAINABLE DEVELOPMENT IN THE UNECE REGION AND BEYOND.....	17 - 18
V. THE CAVTAT DECLARATION.....	19
Second general segment.....	20 - 55
VI. MEETING OF THE SIGNATORIES TO THE PROTOCOL.....	20 - 23
A. Rules of procedure.....	20
B. Preparations for the first meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol .....	21
C. Election of officers .....	22
D. Other business .....	23
VII. REVIEW OF THE WORK CARRIED OUT BY THE WORKING GROUP AND ADOPTION OF DECISIONS .....	24 - 47
A. Review of implementation .....	24 - 25
B. Review of compliance .....	26 - 27
C. Strengthening cooperation with other UNECE conventions .....	28 - 29
D. Guidelines on good practice and bilateral and multilateral agreements .....	30 - 31
E. Strengthening subregional cooperation.....	32 - 33
F. Information exchange for environmental impact assessment in a transboundary context .....	34 - 35
G. Second amendment to the Espoo Convention.....	36 - 37

## **CONTENTS (*continued*)**

H.	Guidance on public participation in environmental impact assessment in a transboundary context .....	38 - 39
I.	Adoption of the work plan up to the fourth meeting of the Parties .....	40 - 41
J.	Budget and financial arrangements for the period until the fourth meeting of the Parties .....	42 - 44
K.	Financial assistance to representatives of countries in transition, non-governmental organizations and countries outside the UNECE region.....	45 - 46
L.	Preparations for the Meeting of the Parties to the Convention serving as the first meeting of the Parties to the Protocol.....	47
VIII.	DATE, VENUE AND ELECTION OF OFFICERS FOR THE FOURTH MEETING OF THE PARTIES .....	48 - 53
A.	Election of officers .....	48 - 52
B.	Dates and venues of meetings .....	53
IX.	PRESENTATION OF THE MAIN DECISIONS .....	54
X.	CLOSING OF THE MEETING.....	55

## **Annexes**

I.	Decision III/1 – Review of implementation
II.	Decision III/2 – Review of compliance
III.	Decision III/3 – Strengthening cooperation with other UNECE conventions
IV.	Decision III/4 – Guidelines on Good Practice and on Bilateral and Multilateral Agreements
V.	Decision III/5 – Strengthening subregional cooperation
VI.	Decision III/6 – Information exchange for environmental impact assessment in a transboundary context
VII.	Decision III/7 – Second amendment to the Espoo Convention
VIII.	Decision III/8 – Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context
IX.	Decision III/9 – Adoption of the work plan up to the fourth meeting of the Parties
X.	Decision III/10 – Budget and financial arrangements for the period until the fourth meeting of the Parties
XI.	Decision III/11 – Financial assistance to representatives of countries in transition, non-governmental organizations and countries outside the UNECE region
XII.	Decision III/12 – Preparations for the first meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol
XIII.	Cavtat Declaration

## **Introduction**

1. The third meeting of the Parties to the Convention on Environmental Impact Assessment (EIA) in a Transboundary Context took place in Cavtat (Croatia) from 1 to 4 June 2004, at the invitation of the Government of Croatia. It included the first meeting of the Signatories to the Protocol on Strategic Environmental Assessment (SEA).

2. The meeting was attended by delegations from the following Parties to the Convention and other UNECE member States: Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Netherlands, Norway, Poland, Republic of Moldova, Romania, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Sweden, Switzerland, Tajikistan, The former Yugoslav Republic of Macedonia, Turkey, Turkmenistan, Ukraine, United Kingdom and Uzbekistan. A representative of the Commission of the European Communities attended the meeting. The following States Members of the United Nations were also represented: Algeria, Islamic Republic of Iran and Lebanon.

3. Representatives of two United Nations bodies attended the meeting: the United Nations Development Programme's Regional Bureau for Europe and the Commonwealth of Independent States (UNDP/RBEC) and the United Nations Environment Programme's Regional Office for Europe (UNEP/ROE). Representatives of specialized agencies and other organizations in the United Nations system also attended: the World Health Organization's Regional Office for Europe (WHO/EURO), the World Bank and the United Nations Industrial Development Organization (UNIDO). The Mekong River Commission, an intergovernmental body, was also represented. The following non-governmental organizations (NGOs) were represented: ECOGLOBE, ECOTERRA, Environment Experts Association, European ECO Forum, Green Forum, Institute of Occupational Medicine and Environmental Health (Poland), International Association for Impact Assessment (IAIA), International Public Network for Environmental Impact Assessment (IPNEIA), Regional Environmental Center for Central and Eastern Europe (REC-CEE), and Russian Regional Environmental Centre.

4. The meeting consisted of two general segments and one high-level segment. The two general segments (dealing with items 1, 2 and 6 to 11 of the provisional agenda, ECE/MP.EIA/5) took place on 1 and 4 June 2004, and served in part as the first meeting of the Signatories to the Protocol on SEA. The high-level segment was held on 3 June 2004. It included a formal opening ceremony and a panel discussion and culminated with the adoption of the Cavtat Declaration. On the morning of 2 June 2004, two side events were organized by civil society organizations, the first on EIA and SEA practice and capacity-building, the second on capacity-building needs for the implementation of the Protocol on SEA in selected East European, Caucasian and Central Asian (EECCA) countries. The presentations, speeches and statements made during the third meeting are available on the Convention's web site at <http://www.unece.org/env/eia>.

## **First general segment**

### **I. OPENING OF THE MEETING AND CONSTITUTION**

#### **A. Opening of the meeting**

5. Ms. Visnja Jelic Mück, State Secretary of the Croatian Ministry of the Environment, opened the meeting, welcoming the delegations to Croatia.

#### **B. Constitution of the general segments**

##### **Background document:**

Note by the secretariat: Status of ratification of the Convention and its first amendment, and status of signature of the Protocol

6. The Meeting elected the Chair of the Convention's Bureau, Mr. Nenad Mikulic (Croatia), as Chair for the two general segments.

7. The secretariat reported on the representation at the third meeting of the Parties and the credentials submitted by the Parties and Signatories. The secretariat informed the Meeting of the Parties about the status of ratification of the Convention and the declarations made by Parties upon deposit of their instruments of ratification of the Convention since the second meeting of the Parties. The secretariat also informed the Meeting of the status of signature of the Protocol and the declarations made by Signatories upon deposit of their instruments of signature.

#### **C. Adoption of the agenda**

##### **Document for adoption:** ECE/MP.EIA/5

8. The Meeting adopted its agenda, having agreed to re-examine the draft Cavtat Declaration in response to a proposal from the host Government.

### **II. OUTSTANDING ISSUES**

9. Under this item, the Meeting discussed and agreed on outstanding issues prior to the high-level segment.

#### **A. Work plan until the fourth meeting of the Parties**

##### **Document for finalization:** MP.EIA/2004/10

**Background document:** Proposal by the Bureau to prioritize the items in the Budget and Work Plan

10. The Chair of the Working Group on EIA, Mr. Stefan Ruchti (Switzerland), introduced the draft work plan prepared by the Working Group on EIA and refined by the Bureau (MP.EIA/WG.1/2004/2). The European Union (EU) Presidency (Ireland) presented the coordinated EU position on the work plan, suggesting a number of changes to the table. The Meeting discussed the draft, taking the coordinated EU position into account, examining each activity in turn and completing missing information. It agreed on a draft work plan for adoption during the second general segment (see para. 40).

**B. Budget and financial arrangements for the period until the fourth meeting of the Parties**

Document for finalization: MP.EIA/2004/11

11. Mr. Ruchti introduced the draft budget prepared by the Working Group on EIA and refined by the Bureau. Mr. Ruchti also presented a document defining a possible prioritization of activities in the work plan. The EU Presidency (Ireland) presented an alternative prioritization document. The Meeting discussed the various documents and established a small group to finalize the budget, taking into account the priorities presented. The small group reported back to the Meeting, which then agreed on a revised draft budget for adoption during the second general segment (see para. 42). In addition, it was agreed that a budgetary-reporting mechanism should be specified and adopted. Delegations began to pledge contributions to the budget, a process that continued in the second general segment (para. 42).

**C. Date, venue and election of officers for the fourth meeting of the Parties to the Convention**

12. The Chair invited proposals for the venue of the fourth meeting of the Parties. The delegation of Romania offered to host that meeting. Mr. Terje Lind (Norway) proposed officers for the period up to the fourth meeting of the Parties.

**D. Election of officers for the Meeting of the Signatories to the Protocol**

13. Mr. Lind also proposed officers for the Meeting of the Signatories to the Protocol, who would serve subsequent meetings of the Signatories and remain in office until the fourth meeting of the Parties to the Convention or the first meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol, whichever came first.

**E. Other business**

Document for finalization: MP.EIA/2004/1

Background document: Government of Croatia's alternative text for the Cavtat Declaration (ECE/ENHS/NONE/2004/14)

14. A draft Cavtat Declaration was prepared at the seventh meeting of the Working Group on EIA, setting out the main directions of the implementation and objectives of the Convention and its Protocol. The delegation of Croatia presented an alternative text for the draft Cavtat Declaration, with the aim of strengthening it further. Following discussion, the Meeting agreed to consider a slightly amended text during the high-level segment (para. 19).

**High-level segment**

**III. OPENING CEREMONY**

15. Ms. Kolinda Grabar-Kitarovic, Minister of European Integration, opened the high-level segment of the third meeting of the Parties and welcomed the delegations on behalf of the Croatian Government. The Minister stated that she saw both instruments as important for the promotion of sustainable development, environmental protection and cooperation with Croatia's neighbouring states. The Minister urged States which had not yet done so to ratify or accede to the Convention, and mentioned in particular Croatia's neighbouring countries. Seeing the Espoo Convention and its Protocol as complementing the Barcelona Convention and its protocols, she encouraged all Mediterranean States to accede to both the Convention and the Protocol. Finally, she invited delegations to work together to make the implementation of the Protocol a success and to strengthen and extend the application of the

Convention and to these ends invited delegations to adopt the Cavtat Declaration and the decisions put before the Meeting.

16. Mr. Patrice Robineau, Acting Deputy Executive Secretary of the Economic Commission for Europe, also addressed the Meeting. He mentioned that the application of the Convention and its principles in transboundary cooperation had diminished the harmful impacts of planned projects on the environment and contributed to better international cooperation by increasing trust and understanding between the Parties concerned. The Convention had had an increased impact on EIA arrangements and practice and he acknowledged that the Convention had had an important role in building EIA capacity among Parties. He also referred to the collaboration between the Convention, UNEP, the European Bank for Reconstruction and Development and the Caspian Environment Programme, illustrating how organizations and countries could work together to facilitate effective transboundary EIA. He suggested that the proposed work plan should reflect the political will of UNECE Governments to take an active and forward-looking approach to capacity-building, to the review of implementation and to the drafting of guidelines to make the Convention more effective.

#### **IV. THE CONVENTION AND THE PROTOCOL AS INSTRUMENTS FOR DECISION-MAKING IN SUPPORT OF SUSTAINABLE DEVELOPMENT IN THE UNECE REGION AND BEYOND**

17. A panel discussion was held with the following 11 panellists examining the two topics, as below:

##### **First panel – Integrated approaches to decision-making and the benefits of SEA and sustainability appraisal**

- Ms. Fatme Iliaz, Deputy Minister of the Environment, Bulgaria;
- Mr. Robert G. Connelly, Acting President, Canadian Environmental Assessment Agency;
- Ms. Lisette Simcock, Divisional Manager, Planning, International, Compensation and Assessment Division, Office of the Deputy Prime Minister, United Kingdom;
- Mr Bo Elling, EIA Centre, Department of Environment, Technology and Social Studies, Roskilde University, Denmark;
- Mr. Barry Sadler, adviser to REC-CEE and to UNEP; and
- Mr. Jules de Heer, Ecoscan SA, Switzerland.

The theme referred to the use of the Convention and the Protocol as decision-aiding tools to promote sustainable development. There was much debate as to whether EIA and SEA were adequately implemented for achieving sustainable development, and whether the fact that their focus on providing information on the environment was to the detriment of informed decision-making, or whether sustainability appraisals, in which socio-economic effects were examined concurrently with environmental ones, were more appropriate.

Panellists also examined the relationship between EIA and SEA and existing decision-making processes and how much they influenced decision-making. Panellists also discussed integrated environmental management, where an activity was subject to EIA and SEA and to a larger range of environmental management tools, upstream to environmental accounting and downstream to environmental management systems and auditing. They also examined links with sustainable development strategies.

During this panel discussion it was generally agreed that experience had shown that EIA and SEA had been successful in promoting sustainable development by

increasing the visibility of environmental impacts and putting forward alternative ways to prevent these impacts. However, practice in these fields was still evolving and it seemed that further improvement was needed. It was acknowledged that flexibility in the implementation of EIA and SEA was important.

**Second panel – Capacity-building and quality assurance in EIA and SEA and opportunities for stakeholder participation and partnerships**

- Mr. Anatolii Hrytsenko, Deputy Minister of Environment and Natural Resources, Ukraine;
- Mr. Andriy Andrusevych, Ecopravo-Lviv (Ukraine) and European ECO Forum;
- Mr. Aleg Cherp, Department of Environmental Sciences and Policy, Central European University, Hungary;
- Mr. Andrzej Kassenberg, Environmental Planner, Institute for Sustainable Development, Warsaw; and
- Mr. Jean-Roger Mercier, World Bank Environmental Specialist.

To strengthen implementation of the Convention and, later, the Protocol, there remained a significant demand for capacity-building. The draft work plan (MP.EIA/2004/10) envisaged a number of activities to develop capacity. The panel discussed what form such capacity-building should take, what approaches were most effective given the limited resources available, what approaches had failed and what could be learned, what needs capacity-building should focus on, and how workable national EIA and SEA systems could be established. Panellists also examined capacity-building partnerships involving NGO and private sector stakeholders.

The panellists also discussed quality assurance. Quality assurance in EIA and SEA was crucial to avoid a watering-down of the progressive objectives set in the Convention and the Protocol. There were links to the issues of capacity-building and participation, as quality assurance should or could be a part of capacity-building and as effective public participation could contribute to a better quality of EIA and SEA.

Public participation was essential to effective implementation of the Convention and the Protocol. Much work had already been done on public participation in the Convention. The panellists discussed what more needed to be done, what worked well and what new approaches might be taken. Finally, panellists discussed other issues related to implementation that required further attention, including methodological weaknesses such as assessing cumulative effects.

The panel discussion showed that the new thinking in capacity-building and quality assurance for effective EIA and SEA should take into account approaches, methods and practical experiences at national and international levels. Capacity-building strategies should be drawn up in cooperation with NGOs and the private sector and be based on specific needs and the implementation of these strategies should be evaluated.

18. The delegations of: Albania, Armenia, Bulgaria, Czech Republic, Italy, Kazakhstan, Kyrgyzstan, Romania, Switzerland, the former Yugoslav Republic of Macedonia, Turkmenistan, the European Commission and the Islamic Republic of Iran made oral statements. The delegations of Estonia, Latvia, Slovenia, UNDP/RBEC, IAIA and REC-CEE made written statements available to the Meeting. The Meeting requested the secretariat to make these statements available on the Convention's web site.



## **V. THE CAVTAT DECLARATION**

Document for adoption: MP.EIA/2004/1, revised

19. The delegation of Croatia introduced the amended draft Cavtat Declaration. The Meeting of the Parties adopted the Cavtat Declaration, (see annex XIII below).

### **Second general segment**

## **VI. MEETING OF THE SIGNATORIES TO THE PROTOCOL**

### **A. Rules of procedure**

20. At the invitation of the Chair of the Bureau, the Meeting of the Signatories to the Protocol agreed to apply provisionally the rules of procedure for the Convention.

### **B. Preparations for the first meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol**

Document for adoption: MP.EIA/2004/13

21. The delegation of the Netherlands introduced a draft decision on preparations for the first meeting of the Parties to the Protocol, which the Meeting of the Signatories endorsed.

### **C. Election of officers**

22. The Chair of the Bureau proposed that the Meeting of the Signatories should elect its officers, as nominated by Mr. Lind under item 2. The Meeting of the Signatories endorsed these nominations:

- Chair: Mr. Jan De Mulder (Belgium);
- Vice-Chair: Mr. Gia Zhorzholiani (Georgia); and
- Vice-Chair: Mr. David Aspinwall (European Commission).

### **D. Other business**

23. The Chair of the Meeting of the Signatories, Mr. Jan De Mulder, informed the Meeting of a communication from the Chair of the Meeting of the Parties to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, addressed to himself and the Chair of the Bureau, proposing that the Aarhus and Espoo Convention's bodies should hold a joint workshop on public participation in strategic decision-making. The Signatories welcomed the proposal and requested its Chair to seek further clarification from the Chair of the Meeting of the Parties to the Aarhus Convention and to report to them at their next meeting.

## **VII. REVIEW OF THE WORK CARRIED OUT BY THE WORKING GROUP AND ADOPTION OF DECISIONS**

### **A. Review of implementation**

Documents for adoption: MP.EIA/2004/2 and Add.1 and 2

24. The delegation of Austria introduced draft decision III/1 on the review of the implementation of the Convention, which was based on information provided by Parties. The first review had revealed the strengths of the Convention, notably as a basis for bilateral agreements to provide a practical framework for transboundary consultations, and an increasing application of its provisions. The review had also revealed weaknesses, showing where further efforts needed to be focused to make the Convention more effective. The decision put forward for adoption suggested that all Parties should further strengthen their implementation of the Convention, indicating a number of practical means by which

implementation may be improved. The decision also initiated a second review of implementation.

25. The Meeting of the Parties adopted decision III/1 on the review of implementation (see annex I below).

## **B. Review of compliance**

Documents for adoption: MP.EIA/2004/3

26. The delegation of the United Kingdom introduced draft decision III/2 on the review of compliance, which encouraged Parties to bring issues concerning their own compliance before the Convention's Implementation Committee. The decision also revised the Committee's structure and functions, taking into account its work undertaken in the period between the second and third meetings of the Parties.

27. The Meeting of the Parties adopted decision III/2 on the review of compliance (see annex II below).

## **C. Strengthening cooperation with other UNECE conventions**

Document for adoption: MP.EIA/2004/4

28. The delegation of Romania, representing the host of a workshop on strengthening cooperation with other UNECE environmental conventions, introduced draft decision III/3 on this topic, requesting the Working Group on EIA to identify issues for further work in this area in consultation with the other UNECE conventions.

29. The Meeting of the Parties adopted decision III/3 on strengthening cooperation with other UNECE conventions (see annex III below).

## **D. Guidelines on good practice and bilateral and multilateral agreements**

Document for adoption: MP.EIA/2004/5 and Add.1

30. The delegation of Finland, representing the lead countries for the drafting of the guidelines on good practice and bilateral and multilateral agreements, introduced draft decision III/4. The guidelines had been developed to encourage the application of such agreements as instruments to strengthen further the implementation of the Convention. Mr. Stefan Ruchti informed the Meeting that Austria, Germany, Liechtenstein and Switzerland had together prepared a German-language version of the guidelines.

31. The Meeting of the Parties adopted decision III/4 on Guidelines on Good Practice and on Bilateral and Multilateral Agreements (see annex IV below).

## **E. Strengthening subregional cooperation**

Document for adoption: MP.EIA/2004/6

32. In its introduction to draft decision III/5 on strengthening subregional cooperation, the delegation of Poland, on behalf of the lead countries, mentioned that the guidance was intended to stimulate cooperation amongst Parties and non-Parties, the ratification process and the practical application of the Convention. This decision also suggested including subregional cooperation as an activity in the work plan, as reflected in decision III/9 (see para. 40).

33. The Meeting of the Parties adopted decision III/5 on strengthening subregional cooperation (see annex V below).

**F. Information exchange for environmental impact assessment in a transboundary context**

Document for adoption: MP.EIA/2004/7

34. The delegation of Bulgaria introduced draft decision III/6 on information exchange for EIA in a transboundary context, which aimed at establishing an information-exchange mechanism via the web site of the Convention, so that all those involved in the implementation of the Convention would have access to this information.

35. The Meeting of the Parties adopted decision III/6 on information exchange for EIA in a transboundary context (see annex VI below).

**G. Second amendment to the Espoo Convention**

Document for adoption: MP.EIA/2004/8, revised

36. The delegation of Croatia introduced draft decision III/7 on the second amendment to the Convention, with a view to strengthening further the application of the Convention. The amendment introduced procedures for ‘scoping’ within transboundary EIA, revised and extended Appendix I to the Convention and provided for a number of refinements to the Convention to improve legal certainty in its application. The secretariat described a number of minor editorial amendments to the draft decision, together with a minor clarification of the new article 14 bis on the review of compliance. All delegations welcomed this proposal.

37. The Meeting of the Parties adopted decision III/7 on the second amendment to the Convention with the above-mentioned amendments (see annex VII below).

**H. Guidance on public participation in environmental impact assessment in a transboundary context**

Documents for adoption: MP.EIA/2004/9 and Add.1 and 2

38. The delegation of the Russian Federation, as lead country, introduced draft decision III/8 on guidance on public participation in EIA in a transboundary context. It thanked Italy and the United Kingdom for their support for this activity. The representative of ECOTERRA introduced the guidance in more detail. The guidance was intended to assist competent authorities and the public in organizing effective public participation in EIA in a transboundary context, and to monitor its implementation and its effectiveness.

39. The Meeting of the Parties adopted decision III/8 on the guidance on public participation in EIA in a transboundary context (see annex VIII below).

**I. Adoption of the work plan up to the fourth meeting of the Parties**

Document for adoption: MP.EIA/2004/10, revised

40. Mr. Stefan Ruchti, Chair of the Working Group on EIA, introduced the revised draft decision III/9 on the adoption of the work plan up to the fourth meeting of the Parties. He introduced its key features: its emphasis on the implementation of and compliance with the Convention, on the further application of tools that had been effective in the past (e.g. subregional cooperation, and capacity-building in the countries of Eastern Europe, the Caucasus and Central Asia), and on building-capacity for the Protocol and preparing for its entry into force.

41. The Meeting of the Parties adopted decision III/9 on the adoption of the work plan up to the fourth meeting of the Parties (see annex IX below).

## **J. Budget and financial arrangements for the period until the fourth meeting of the Parties**

Document for adoption: MP.EIA/2004/11, revised

42. Mr. Ruchti also introduced draft decision III/10 on the budget and financial arrangements for the period until the fourth meeting of the Parties, including the financial and human resources needed for implementing the activities in the work plan, and indicating funding for these activities according to its priorities. The decision also introduced a share-based system intended to provide stable and predictable funding. Mr. Ruchti described changes that had been made to the draft decision as a result of discussion under item 2 (b) earlier in the meeting.

43. The following delegations made pledges in accordance with the scheme proposed in decision III/10:

<b>Country or delegation</b>	<b>Shares (each of 1,000 United States dollars)</b>
Austria	5 shares per year for three years.
Bulgaria	An contribution in kind to host a subregional cooperation meeting in 2005.
Canada	A total of Can\$ 15,000 for the three-year period, earmarked for activities related to the Espoo Convention only. An initial Can\$ 5,000 will be provided in 2004 to be followed by a Can\$ 5,000 contribution for each of the subsequent 2 years. (This contribution is subject to currency exchanges.)
Croatia	A total of 5 shares for the three-year period.
Czech Republic	5 shares in 2005 earmarked for the activity "Production of a capacity development manual, and provision of training, to support implementation of the SEA" and 5 shares in 2006 (not earmarked).
Finland	A total of 30 to 35 shares for the three-year period.
Germany	A total of 30 shares for the three-year period, half of which to be paid in 2004. Half of pledge earmarked for Implementation Committee activities, and half for participation in meetings by NGOs and countries with economies in transition.
Hungary	3 shares per year for three years.
Ireland	Approximately 12 shares (€10,000) per year for three years, earmarked for capacity development in SEA, including creation of a capacity development manual; sub-activity: drafting of manual.
Italy	Approximately 32 shares (€25,000) in 2004, plus approximately €20,000 earmarked for subregional cooperation activities (Mediterranean meeting).
Netherlands	Approximately 12 shares (€10,000) per year for three years, earmarked for the activity "Compliance with and implementation of the Convention".
Norway	20 to 25 shares per year for three years, subject to approval.
Poland	2 shares in 2004.
Romania	5 shares in 2005 and again in 2006.
Slovenia	3 shares per year from 2005.
Sweden	A total of US\$ 20,000 for the three-year period (equivalent to 20 shares), in cash or in kind, earmarked for subregional cooperation around the Baltic Sea.
Switzerland	15 shares in 2004, plus contributions in kind. 15 to 20 shares per year in subsequent years, subject to approval.
United Kingdom	50 shares in 2004, with similar contributions indicated in 2005 and 2006 but subject to approval.
European Commission	Approximately 61 shares (€50,000) in 2004.

44. The Meeting of the Parties adopted decision III/10 on the budget and financial arrangements for the period until the fourth meeting of the Parties (see annex X below).

**K. Financial assistance to representatives of countries in transition, non-governmental organizations and countries outside the UNECE region**

Document for adoption: MP.EIA/2004/12

45. The delegation of Bulgaria introduced draft decision III/11 on financial assistance to representatives of countries in transition, NGOs and countries outside the UNECE region, which recognized the importance of broad participation by all member States and defined criteria for providing financial assistance to representatives and experts.

46. The Meeting of the Parties adopted decision III/11 on financial assistance to representatives of countries in transition, NGOs and countries outside the UNECE region (see annex XI below).

**L. Preparations for the first meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol**

Document for adoption: MP.EIA/2004/13

47. Further to the discussion during the meeting of the Signatories to the Protocol (para. 21), the Meeting of the Parties adopted decision III/12 on preparations for the first meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (see annex XII below).

**VIII. DATE, VENUE AND ELECTION OF OFFICERS FOR THE FOURTH MEETING OF THE PARTIES**

**A. Election of officers**

48. Following the rules of procedure, the Meeting of the Parties discussed the election of its officers, who would remain in office until the next election at its fourth meeting. The Meeting first thanked the outgoing officers and members of the Bureau:

- Chair of the Bureau: Mr. Nenad Mikulic (Croatia);
- Chair of the Working Group on EIA: Mr. Stefan Ruchti (Switzerland);
- Vice-Chair of the Working Group on EIA: Mrs. Vania Grigorova (Bulgaria);
- Chair of the Meeting of the Signatories to the Protocol on SEA: Mr. Jan De Mulder (Belgium);
- Vice-Chair of the Meeting of the Signatories to the Protocol on SEA: Mr. Gia Zhorzholiani (Georgia);
- Vice-Chair of the Meeting of the Signatories to the Protocol on SEA: Mr. David Aspinwall (European Commission);
- Chair of the Implementation Committee: Mr. Roger Gebbels (United Kingdom);
- Ms. Irena Buciunaite (Lithuania);
- Mr. Terje Lind (Norway);
- Ms. Krystyna Skarbek (Poland); and
- Mr. Sten Jerdenius (Sweden).

49. The nominations by Mr. Lind (para. 12) were endorsed by the Meeting, including the return of the officers for the Meeting of the Signatories to the Protocol on SEA to serve in their previous positions (para. 22).

- Chair of the Bureau: a representative of the host country for the next meeting of the Parties (Romania);
- Chair of the Working Group on EIA: Mrs. Vania Grigorova;

- Vice-Chair of the Working Group on EIA: Ms. Sandra Ruza (Latvia);
- Vice-Chair of the Working Group on EIA: Mr. Roger Gebbels;
- Chair of the Meeting of Signatories to the Protocol on SEA: Mr. Jan De Mulder;
- Vice-Chair of the Meeting of Signatories to the Protocol on SEA: Mr. David Aspinwall;
- Vice-Chair of the Meeting of Signatories to the Protocol on SEA: Mr. Gia Zhorzholiani; and
- Chair of the Implementation Committee: Ms. Seija Rantakallio (Finland).

50. The Meeting thanked the following outgoing member countries of the Implementation Committee: Canada, Netherlands, Republic of Moldova and United Kingdom.

51. The Meeting confirmed that the following countries, members of the Implementation Committee, would remain in accordance with paragraph 1 (a) of the appendix to decision II/4 (and decision III/2): Armenia (Mrs. Margarita Korkhmazyan); Finland (Ms. Seija Rantakallio); the former Yugoslav Republic of Macedonia (Ms. Menka Spirovska); and Slovakia (Mr. Thomas Cernohous).

52. Finally, the Meeting elected four new members to the Implementation Committee: Croatia, Germany, Kyrgyzstan and Poland.

#### **B. Dates and venues of meetings**

53. The delegation of Romania confirmed its willingness to host the fourth meeting of the Parties (para. 12), tentatively scheduled for April 2007. In accordance with rule 4 of the rules of procedure, the Meeting of the Parties welcomed the offer of the Government of Romania. The Meeting also agreed on a tentative calendar of initial meetings of its subsidiary bodies, with the second meeting of the Signatories to the Protocol and the eighth meeting of the Working Group on EIA scheduled back to back in April 2005.

### **IX. PRESENTATION OF THE MAIN DECISIONS**

54. Mr. Mikulic, Chair of the Meeting, summarized the main decisions taken at the third meeting of the Parties, namely those adopted during the second general segment (para. 20-47), together with the Cavtat Declaration (para. 19), as annexed to this report.

### **X. CLOSING OF THE MEETING**

55. In closing the meeting, Ms. Visnja Jelic Mück thanked all delegations for their constructive approach to finding solutions to the outstanding issues. Mr. Robineau thanked the delegation of Croatia for the excellent organization of the meeting and indicated that this meeting was crucial for the implementation of the Convention. The meeting was closed on 4 June 2004.

**Annex I**

**DECISION III/1  
REVIEW OF IMPLEMENTATION**

The Meeting,

Recalling its decision II/10 on the review of the Convention,

Having analysed the responses provided by the Parties to the questionnaire for the reporting system,

1. Adopts the Review of Implementation 2003 – Summary, as appended to this decision;
2. Requests the secretariat to make the Summary and the full Review of Implementation 2003 available on the web site of the Convention;
3. Noting further areas of improvement as highlighted in the Review of Implementation 2003, requests Parties to ensure that:
  - (a) The contact details of their points of contact are transmitted to the secretariat, which shall make this information available on the Convention's web site;
  - (b) Their points of contact are competent in the application of the Convention;
  - (c) The contents of the notifications issued by the Parties of origin comply with Article 3, paragraph 2, of the Convention and with decision I/4;
  - (d) The final decisions made by the Parties of origin are provided to the affected Parties as soon as possible after they have been taken;
  - (e) The contents of the final decisions made by the Parties of origin comply with Article 6, paragraph 2, of the Convention;
  - (f) The public of the concerned Parties is encouraged to participate in procedures under the Convention;
  - (g) In compliance with Article 9 of the Convention, they exchange information with the other Parties on the results of their research programmes;
4. Notes that the Review of Implementation 2003 suggests that the implementation of the Convention can be strengthened through subregional cooperation and the preparation of bilateral and multilateral agreements;
5. Requests the secretariat to bring to the attention of the Implementation Committee general compliance issues identified in the Review of Implementation 2003, and requests the Implementation Committee to take these into account in its work;

6. Requests the Implementation Committee to prepare a revised and simplified questionnaire on the implementation of the Convention for consideration by the Working Group on Environmental Impact Assessment and for circulation by the secretariat thereafter;

7. Requests Parties to complete the revised and simplified questionnaire and decides that a second draft review of implementation based on the responses will be presented at the fourth meeting of the Parties, and that the work plan shall reflect the elements required to prepare the second draft review.



## **Appendix**

### **REVIEW OF IMPLEMENTATION 2003 - SUMMARY**

#### **Contents**

#### **Introduction**

- I. The Convention
- II. Mandate and aim of the review
  - A. Review
  - B. Questionnaire
- III. Outcome of the Review
  - A. Issue of the questionnaire
  - B. Responses
  - C. Structure of the review
  - D. Terminology

#### **Summary**

- Overview of domestic implementation
- I. Application of the Convention
- II. Notification
- III. Preparation of the EIA documentation
- IV. Transfer and distribution of the EIA documentation
- V. Public participation
- VI. Consultation
- VII. Final decision
- VIII. Post-project analysis
- IX. Translation
- X. Contact points
- XI. Inquiry procedure
- XII. Settlement of disputes
- XIII. Bilateral and multilateral agreements
- XIV. Research programme
- XV. General questions
- XVI. Experiences and opinions

#### **Conclusions**

## **Introduction**

1. This document presents three key elements of the “Review of Implementation 2003”: the introduction, summary and conclusions. The complete “Review of Implementation 2003”, including detailed responses to a questionnaire, will be made available once adopted by the Meeting of the Parties.

### **I. THE CONVENTION**

2. The Convention on Environmental Impact Assessment (EIA) in a Transboundary Context was adopted and signed on 25 February 1991, in Espoo, Finland. As of 1 September 2003, there were forty Parties to the Convention – 39 member States of UNECE plus the European Community (EC), referred to as ‘a regional economic integration organization’ in the Convention.

3. The Convention does not specify its objectives explicitly, but these may be inferred from its general provisions (see box below). The diagram below illustrates the main steps of the transboundary EIA procedure under the Convention.

4. Two subsidiary bodies support the activities of the Meeting of the Parties to the Convention: the Working Group on EIA and the Implementation Committee.

5. On 21 May 2003, the Convention was supplemented by the Protocol on Strategic Environmental Assessment.

6. This introductory chapter continues with a description of the mandate and aim of the Review, a description of its outcome and a summary of the conclusions drawn.

### **II. MANDATE AND AIM OF THE REVIEW**

#### **A. Review**

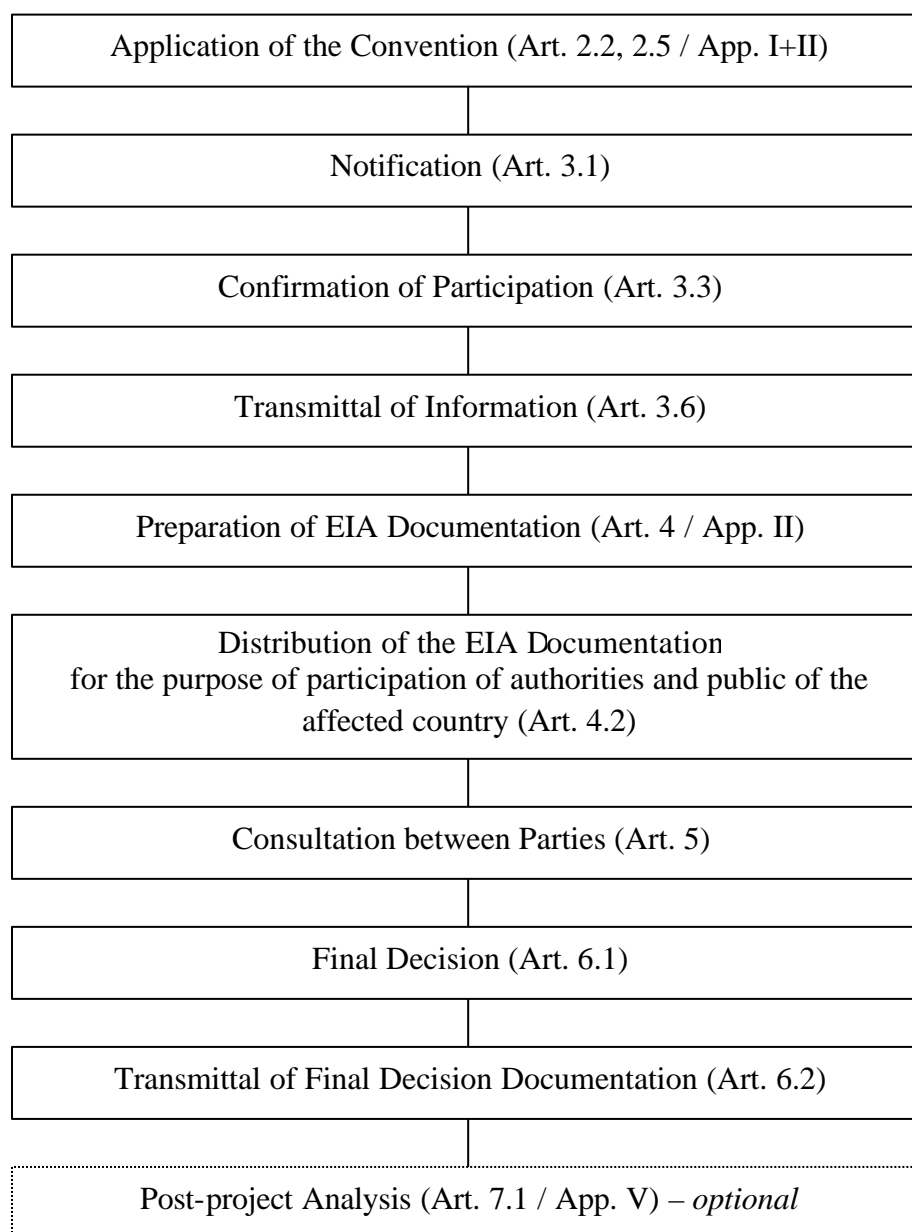
7. The Meeting of the Parties decided at its second meeting in Sofia, 26-27 February 1991, to adopt a work plan (decision II/11) that included an activity on ‘Reviews of the implementation of the Convention’. The objective of the activity was that Parties and non-Parties submit information on recent developments in their implementation of the Convention, with a draft review to be considered at the third meeting of the Parties to review the implementation of the Convention.

8. It was decided that the secretariat would prepare a draft review based on the information provided by Parties and non-Parties pursuant to the reporting system adopted by the Working Group, for discussion and possible adoption at the third meeting of the Parties. The draft review would be prepared in 2003 and would incorporate the information received for consideration at the third meeting of the Parties, at least nine months before this third meeting.

**Article 2 – General Provisions**

1. The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.
2. Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in Appendix I that are likely to cause significant adverse transboundary impact, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Appendix II.
3. The Party of origin shall ensure that in accordance with the provisions of this Convention an environmental impact assessment is undertaken prior to a decision to authorize or undertake a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.
4. The Party of origin shall, consistent with the provisions of this Convention, ensure that affected Parties are notified of a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.
5. Concerned Parties shall, at the initiative of any such Party, enter into discussions on whether one or more proposed activities not listed in Appendix I is or are likely to cause a significant adverse transboundary impact and thus should be treated as if it or they were so listed. Where those Parties so agree, the activity or activities shall be thus treated. General guidance for identifying criteria to determine significant adverse impact is set forth in Appendix III.
6. The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.
7. Environmental impact assessments as required by this Convention shall, as a minimum requirement, be undertaken at the project level of the proposed activity. To the extent appropriate, the Parties shall endeavour to apply the principles of environmental impact assessment to policies, plans and programmes.
8. The provisions of this Convention shall not affect the right of Parties to implement national laws, regulations, administrative provisions or accepted legal practices protecting information the supply of which would be prejudicial to industrial and commercial secrecy or national security.
9. The provisions of this Convention shall not affect the right of particular Parties to implement, by bilateral or multilateral agreement where appropriate, more stringent measures than those of this Convention.
10. The provisions of this Convention shall not prejudice any obligations of the Parties under international law with regard to activities having or likely to have a transboundary impact.

### Main procedural steps of the Convention



### B. Questionnaire

9. The review has been undertaken on the basis of responses to a questionnaire that was circulated to all member States of UNECE. The questionnaire was defined in a submission to the Working Group on EIA (MP.EIA/WG.1/2001/3), pursuant to an activity relating to a 'Reporting system', defined in the work plan adopted at the second meeting of the Parties (decision II/1).

10. The objective of the activity was that the Implementation Committee would prepare recommendations for a revision of the questionnaire used for reporting for future reviews of the implementation of the Convention. The capacity and technical possibilities of the ENIMPAS database were to be used in the reporting system.<sup>1</sup> The objective was to improve the questionnaire so that it provides information on how the obligations of the Convention

have been compiled with, both at the general level and by particular Parties. The Committee would also consider whether any further steps might be recommended to improve the monitoring of, and compliance with, the obligations arising under the Convention.

11. The delegation of the United Kingdom acted as lead country for this activity, with the assistance of the secretariat. The Implementation Committee established by the Meeting of the Parties in accordance with decision II/4 met with a view to preparing its recommendation. It was also decided that the Committee would present its recommendation for a new reporting mechanism at the fourth meeting of the Working Group on EIA.

12. The document prepared for consideration by the Working Group on EIA (MP.EIA/WG.1/2001/3) stated in its introduction that the purpose of the questionnaire was to elicit the information necessary for the production of a report on the Parties' implementation of the Convention on EIA in a Transboundary Context and to gather information on the practices of non-Parties with respect to transboundary EIA. This would serve as background information to strengthen the implementation of the Convention and help achieve its goals.

13. The questionnaire covered the most important provisions in the Convention. The first chapters were all divided into two parts: "questions to the Party in the role as a Party of origin" and "questions to the Party in the role as an affected Party" in order to get feedback on the experiences that the Parties had in these respective roles. The last chapters were addressed to all Parties as "concerned Parties" because of their more general character.

14. EIA procedures are carried out by different authorities/bodies in a Party depending on the political system, the type of "activity" and its location. The fact that there are different actors involved in the implementation of the Convention could lead to some differences. The questionnaire therefore asked whether the Party, in its experience of EIA procedures, considered that the application of the Convention varied with the different types of actors within the Party or within another Party.

15. Concrete examples were to be provided where possible. The document also stated that the Working Group on EIA might request the Implementation Committee to review the questionnaire in the light of the answers provided by the Parties.

### **III. OUTCOME OF THE REVIEW**

#### **A. Issue of the questionnaire**

16. The questionnaire was issued late in 2002 and again, following some minor amendments,<sup>2</sup> in mid-2003. The most recent response is referred to in those cases where a Party submitted a completed questionnaire on both occasions. The questionnaire is divided into two sections, referred to here as the 'domestic' and 'main' sections.

#### **B. Responses**

17. Completed 'main' questionnaires were received from 25 of the 39 States that are Parties to the Convention:<sup>3</sup> Armenia; Austria; Belgium<sup>4</sup>; Bulgaria; Canada; Croatia; Czech Republic; Denmark<sup>5</sup>; Estonia; Finland; France; Germany; Hungary; Italy; Kyrgyzstan; Latvia; Lithuania; Netherlands; Norway; Poland; Republic of Moldova; Slovakia; Sweden; Switzerland; United Kingdom.

18. In addition, the EC is a Party to the Convention but, being a regional economic integration organization rather than a State, has a different status and therefore felt it inappropriate to send in a completed questionnaire. Nonetheless, the EC provided a response explaining its position and why it considered itself unable to complete the questionnaire.

19. The edited responses to the questionnaire are included in the review. Most completed questionnaires were in English, but four were not: France responded in French, whereas Armenia, Kyrgyzstan and the Republic of Moldova replied in Russian. Translated and edited responses from these four Parties are included in the review. In addition, their original, unedited responses are annexed to the review.

20. The remaining 15 States that are Parties to the Convention failed to provide completed 'main' questionnaires.

21. This level of response limits the value of this review, as the responses may not be representative of all 40 Parties. In addition, the responses received varied considerably both in quality and in terms of the amount of experience they reported. Moreover, it was apparent that respondents replied in different ways, with some restricting themselves to describing actual experience whereas others described likely procedural approaches. Similarly, where questions were asked of Parties in each of their possible roles (Party of origin and affected Party), it is apparent that respondents were frequently confused, for example describing their experiences as an affected Party in response to a question relating to their role as Party of origin. Any conclusions drawn must, therefore, be considered as being limited in validity.

22. The following Parties provided completed 'domestic' questionnaires:<sup>6</sup> Armenia; Austria; Bulgaria; Canada; Finland; Italy; Latvia; Poland; Republic of Moldova.

23. In addition, Bosnia and Herzegovina, which is not a Party to the Convention, submitted a completed 'domestic' questionnaire.

### **C. Structure of the review**

24. After this introductory chapter, a summary is provided of all the responses followed by some conclusions. The remainder of the review (and not included in this summary document) reflects the structure of the questionnaire, beginning with a chapter on 'domestic' implementation comprising:

- Legislative, administrative and other measures by which the Convention is implemented;
- Authorities and levels of government responsible for implementation; and
- Summary listing of projects.

25. The greater part of the review concentrates on the 'main' section of the questionnaire, which comprised parts I to XVI (see table of contents).

26. Many of these parts were divided into two sets of questions to reflect the dual role of each Party: as a Party of origin and as an affected Party.

27. Responses to each group of questions have been summarized at the beginning of each group, preceding individual questions and answers. These groups correspond to the section headings listed in the table of contents of the review. All the group summaries have been brought together in the summary below.

28. Answers to individual questions are ordered alphabetically by country, except that: (a) common responses (e.g. a group of respondents reply 'Yes') and simple cross-references to other questions are placed at the beginning; and (b) non-responses, or responses indicating a lack of experience, are placed at the end. All responses have been subject to minor editorial changes. For the sake of brevity, cross-references to answers to other questions are expressed simply as 'see' followed by the full question reference.

#### **D. Terminology**

29. Some standardization of terminology has been undertaken in this review, to make it more readable and easier to compare responses:

- The Convention's term 'EIA documentation' is used throughout the review rather than the terms 'environmental statement', 'environmental report', 'environmental impact statement', 'environmental impact report' or 'EIA report';
- The term 'State ecological examination' is used rather than 'State environmental examination' or 'State ecological expertise';
- The term 'proponent' is used rather than 'developer' or 'investor', where there is no change in meaning; and
- The terms 'activity' and 'project' are generally used interchangeably.

30. Questions are cross-referenced in full, even if the cross-reference is to another question in the same section.

#### **Summary**

31. This section of the review brings together the summaries from the remainder of the review.

### **OVERVIEW OF DOMESTIC IMPLEMENTATION**

32. Only limited information on measures taken and responsibility for implementation was supplied, thus precluding the drawing of any conclusions from this part of the questionnaire.

#### **I. APPLICATION OF THE CONVENTION**

33. To determine whether an activity falls within the scope of Appendix I to the Espoo Convention, respondents generally described a procedure that combined a review against a list, either a direct copy of Appendix I or a more extensive list, and a case-by-case examination using expert judgement. Hungary employed a list of activities combined with a set of quantitative thresholds, thus removing the need for expert judgement.

34. To determine whether a change to an Appendix I activity is "major", respondents again identified a case-by-case examination relying on expert judgement and, in certain instances, consultation of authorities (Bulgaria, Italy) or interested parties (Kyrgyzstan). For some respondents, this examination was aided by guidelines and/or criteria, usually qualitative, but in certain Parties quantitative as well (Austria, Czech Republic, Germany). Again, Hungary employed a complete set of quantitative thresholds, thus removing the need for expert judgement.

35. To determine whether an activity not listed in Appendix I should be treated as if it were so listed, respondents generally reported use of a case-by-case examination relying on expert judgement. Many respondents also noted that their national lists of activities were more extensive than Appendix I to the Convention (Austria, Canada, Finland, Germany, Italy, Netherlands, Poland, Switzerland, United Kingdom). The Republic of Moldova noted the possibility for its Central Environmental Department to extend the list of activity types. Again, Hungary provided an exception in that only those activities in its extensive activity lists were subject to Environmental Impact Assessment (EIA); a bilateral or multilateral agreement might have been used to overcome this restriction.

36. To decide whether a change identified in pursuance of Article 2, paragraph 5, (i.e. to an activity not listed in Appendix I, but treated as if it were so listed) is considered to be a “major” change, respondents generally identified a case-by-case examination relying on expert judgement, supported by the use of quantitative or, more commonly, qualitative criteria (Austria, Bulgaria, Hungary, Latvia, Netherlands). Bulgaria, again, reported providing opportunities for consultation of authorities. Once again, Hungary provided an exception by employing a complete set of quantitative thresholds, thus removing the need for expert judgement.

37. There was greater divergence among the respondents in the procedures applied to determine the significance of transboundary impacts of activities listed in Appendix I. Generally, a case-by-case examination was made using expert judgement, guidelines (Canada, Switzerland) and, in a number of countries, qualitative or quantitative (Latvia) criteria. Switzerland also had a particular interest in involving potentially affected Parties at this stage; in addition, it has a scoping procedure. In the United Kingdom, the consultations were quite wide, though only domestic, extending to non-governmental organizations. The Czech Republic did not apply a significance test; any potential transboundary impact implied the carrying-out of a transboundary EIA.

38. Regarding procedures applied to decide whether an activity not listed in Appendix I, or a major change to such an activity, is considered to have a “significant” adverse transboundary impact, about half of the respondents simply referred to the answer to the previous question. Generally, a case-by-case examination was made using expert judgement, guidelines (Canada, Switzerland, United Kingdom) and, in a number of countries, qualitative or quantitative (Latvia) criteria. Again, Switzerland also had a particular interest in involving potentially affected Parties at this stage. As in the case of listed activities, the Czech Republic did not apply a significance test; any potential transboundary impact implied the carrying-out of a transboundary EIA. Some respondents also noted that their national lists of activities were more extensive than Appendix I to the Convention (Hungary, Italy, Switzerland, United Kingdom). In Hungary only those activities in its extensive activity lists were subject to EIA; a bilateral or multilateral agreement might have been used to overcome this restriction, as might a request from a potentially affected Party.

## II. NOTIFICATION

### A. Questions to the Party in the role of ‘Party of origin’

39. It appears that some of the respondents replied to questions in this section in the role of affected Party, or with respect to domestic EIA procedures, rather than in the role of Party of origin in a transboundary EIA procedure.



40. Most respondents in their role of Party of origin reported that notification was the responsibility of the Espoo 'point of contact' or the environment ministry or national environment agency (or similar), the two often being the same in practice. In France, it was the point of contact in the Ministry of Foreign Affairs for national level projects but the county (*département*) prefect for local ones. In the United Kingdom, the Secretary of State for Environment was responsible for notification (whereas the point of contact is in the Office of the Deputy Prime Minister). In Germany, Kyrgyzstan, the Netherlands, Norway and Switzerland, it was the competent authority that was responsible for the notification though, in the case of the Netherlands, the notification was copied to the point of contact in the environment ministry. No respondent indicated that they did not use the points of contact as decided at the first meeting of the Parties. Apart from the Netherlands, all respondents indicated that the body responsible for notification was permanent. Respondents provided additional information on how the notification was organized.

41. Problems reported by the respondents in complying with the requirements of the Convention (Art. 3, para. 2), included describing "the nature of the possible decision" (Bulgaria), timing (Kyrgyzstan, Netherlands), translation (Netherlands), and the point of contact's level of awareness of the procedure and willingness to accept a notification where a dependent territory was not recognized as such by the affected Party (United Kingdom).

42. Most respondents noted that, in practice, information to supplement that required by the Convention (Art. 3, para. 2) was included in notifications, sometimes in reply to a request from the affected Party (Croatia, France), and sometimes because of a legal requirement (Czech Republic, Poland).

43. Seven Parties reported use of the proposed guidelines in the report of the first meeting of the Parties in Oslo (ECE/MP.EIA/2, decision I/4), but five reported that they did not and two others (Hungary, United Kingdom) noted partial use of the guidelines. Norway reported use of a national format, whereas others used a letter (Estonia, Italy, Lithuania); the Czech Republic and Finland used both a form and a letter.

44. The Convention (in Art. 3, para. 5 (a) and (b)) requires submission of additional information on receipt of a positive response from an affected Party indicating a desire to participate. Certain respondents indicated that information was indeed only sent at this stage (Croatia, Estonia), but the majority said that it was sent with the notification, whereas Poland sent part with the notification (para. 5(b)) and part in response to the request (para. 5(a)). Switzerland and the United Kingdom continued to provide information after notification without waiting for a response.

45. In determining when to send the notification to the affected Party, respondents indicated that this had to occur no later than notifying their own public (Austria, Czech Republic, Finland) or consultees (Sweden, Norway), or no later than when the development notice was issued (Italy, Netherlands, United Kingdom) or a decision taken to hold a public inquiry (France). Switzerland was seeking to notify the affected Party at the scoping stage, whereas in Hungary and Slovakia the notification was sent on receipt of the development request. In Bulgaria, the proponent notified the public at the same time as the competent authority, which then decided whether there was a need for a transboundary EIA procedure and notified the affected Party accordingly. In Canada, Croatia, Germany and Poland, the likelihood of a significant transboundary impact was first determined. In practice, many of the above may have been equivalent.

46. Half of the respondents indicated that their national EIA legislation required a formal scoping process with mandatory public participation. Two Parties without mandatory public participation in the scoping process notified the affected Party once the transboundary impact had been identified (Croatia, Poland). Others reported not having a mandatory scoping process (France, Germany, Italy, United Kingdom), whereas Switzerland said that it did notify the affected Party during the scoping stage.

47. Respondents reported various responses to notifications, but there was generally a lack of experience. Experiences were generally reported as 'good' or 'effective' (Estonia, Finland, Hungary, Slovakia, Sweden); the Netherlands noted the importance of informal contacts. The United Kingdom indicated that responses were usually only received in response to reminders.

48. The time frame for a response was reported as being typically between one and two months by a number of respondents (Croatia, Czech Republic, Estonia, Finland, Germany, Hungary, Italy, Sweden), but slightly shorter in the Netherlands and the United Kingdom. This time frame was derived from national EIA procedures (Czech Republic, Estonia, Finland, France, Hungary, Switzerland), from a combination of national procedures and bilateral agreements (Germany, Italy), or from national procedures adjusted to allow for procedures in the affected Party (Slovakia, United Kingdom). Bulgaria reported a complex set of criteria for determining the time frame. Kyrgyzstan made reference to the project proponent's deadlines.

49. Responses had always or generally been received within the time frame according to a number of respondents (Croatia, Estonia, Finland, France, Hungary, Italy, Slovakia, Sweden). If responses were not received in time, respondents to the questionnaire indicated that a reminder was sent (Croatia, France, Sweden, United Kingdom) and more time allowed (Finland, Italy), but that ultimately the Party of origin might have decided to continue without the participation of the affected Party (Croatia, France, Germany, Kyrgyzstan, United Kingdom). Delays in responses are also likely to result in delays in the entire approval procedure (Hungary, Netherlands, United Kingdom). If an affected Party requested extension of the time frame, most respondents indicated that it was granted, if possible and reasonable.

50. Only the United Kingdom reported problems with the notification procedure, caused by delays in response and by responses not being provided in English.

51. Fewer than half of the respondents indicated that they normally requested information from the affected Parties. Certain respondents reported that they requested general information (Bulgaria, Czech Republic, Switzerland), whereas Hungary requested such information according to a legal provision. By contrast, France noted that this was the responsibility of the project proponent.

52. Responsibility for requesting information was reported by approximately half of the respondents as being with the environment ministry and by the other half as being with the competent authority. In Kyrgyzstan and Italy, it was the project proponent that was responsible. The requests were reportedly sent to the points of contact (Bulgaria, Croatia, Hungary, Italy, Slovakia, Switzerland) or the competent authority (Estonia, Kyrgyzstan); other respondents reported a flexible approach, with more direct contacts being made where possible.

53. The kind of information normally requested was reportedly quite varied, for example it was either general (Czech Republic), defined by law (Hungary) or specific to the case

(Germany, Kyrgyzstan, United Kingdom), or it related to potential impacts (Bulgaria, Slovakia, Switzerland), the affected population (Bulgaria), publicity requirements (United Kingdom) or the state of the environment (Netherlands). The Czech Republic, Slovakia and the Netherlands reported that the information provided was generally sufficient, whereas Croatia said it was “not exactly”. The United Kingdom noted that a development decision could not have been made unless the EIA documentation was sufficient.

54. A response to a request for information from the affected Party has to be provided “promptly”. Respondents varied significantly in their interpretation of “promptly”: as soon as possible (Estonia, Germany), as defined in the request (Bulgaria, United Kingdom), according to agreements (Slovakia) but flexibly (Italy), as agreed by the points of contact (Croatia), two months when the competent authority was a federal one (Switzerland), or at the same time as the affected Party indicated its wish to participate in the EIA procedure (Hungary).

55. Only Croatia reported difficulties in requesting information, with an affected Party unable to submit appropriate data because the data were missing or belonged to someone who was not willing to provide them. (However, both Bulgaria and the United Kingdom noted problems as an affected Party with meeting tight deadlines set in a request that had been delayed in its arrival.)

56. About half of the respondents indicated that it was the affected Party, not the Party of origin, that identified the public in the affected area. Certain respondents indicated that this was supplemented through dialogue between the concerned Parties (Bulgaria, Canada, Germany, United Kingdom). Similarly, responsibility for transferring the notification to the public in the affected Party was reported as being the responsibility of the authorities in the affected Party by most respondents. Certain respondents also indicated that the project proponent (Croatia) or project joint body (Italy) were involved in this matter, whereas Germany suggested that, as Party of origin, it would have used its best efforts to support the notification of the public in the affected Party. Some respondents (Czech Republic, Netherlands, Switzerland) noted that, though it was for the affected Party to transfer the notification to the public, it was the Party of origin’s responsibility to prepare the notification. Finland noted that a regional environmental centre had on one occasion both identified the public in the affected Party and issued the notification to the local authority there.

57. As to how the public was notified in the affected Party, several respondents indicated once again that this was the responsibility of the affected Party (whereas others answered in the role of the affected Party). Similarly, most respondents indicated that the authorities in the affected Party were not only consulted on, but were also responsible for, these issues.

58. Again, several respondents indicated that it was for the affected Party to determine the content of the public notification (Finland, France, Germany). In addition, respondents indicated that certain information should have been included (Bulgaria, Croatia, Czech Republic, Slovakia) in accordance with their domestic law (Germany, Hungary, Norway), bilateral agreements (Italy) or decision I/4 of the Meeting of the Parties (Canada). Eight of twelve respondents indicated that the notification to the public in the affected Party had the same content as the notification to their own public; three of the other four indicated that it might be the same but that it was then for the affected Party to decide the exact content of the notification to its public.

59. Once again, several respondents indicated that the timing of the notification to the public in the affected Party was for the affected Party to decide, though the Netherlands and Switzerland noted that they aimed to assure notification at the same time as their own public

was informed. Croatia reported that the public in the affected Party was notified after the domestic public inquiry had been completed.

60. Only Kyrgyzstan reported on difficulties experienced by the Party of origin in the organization of the notification to the public in the affected Party, noting organizational problems and a lack of procedures.

## **B. Questions to the Party in the role of ‘affected Party’**

61. It would appear that some of the respondents replied to questions in this section in the role of Party of origin rather than in the role of affected Party in a transboundary EIA procedure.

62. In the role of affected Party, most respondents indicated that the (federal) environment ministry was responsible for the reception and distribution of the notification. France indicated that the Ministry of Foreign Affairs received the notification; Canada indicated that both ministries plus the Canadian Environmental Assessment Agency received the notifications. In Sweden, it was the Swedish Environmental Protection Agency, while in the United Kingdom it was the point of contact in the Office of the Deputy Prime Minister. In the Netherlands, provincial points of contact generally received the notifications. Distribution was reportedly much more varied, but recipients included the public (Bulgaria, Hungary), NGOs (Austria, Finland), provincial or local government or authorities (Austria, Canada, Germany, Hungary, Italy, Sweden, Switzerland, United Kingdom), federal or national ministries, authorities or agencies (Austria, Canada, Finland, Hungary, Sweden, United Kingdom), and regional environmental centres (Finland).

63. The content of the notifications received was reportedly adequate or good for some respondents (Croatia, Czech Republic, Norway, Slovakia, Switzerland), variable or inadequate for others (Austria, Finland, Poland, Sweden, United Kingdom).

64. The content and format of the notification received was reported by some respondents as being consistent with decision I/4 (Bulgaria, Croatia, Czech Republic, Finland, France, Italy, Norway) and giving adequate information for a decision (Croatia, Czech Republic, France, Hungary, Italy, Norway, United Kingdom). Others indicated that they were not consistent with the decision (Austria, Hungary, Poland, Slovakia), did not necessarily fully reflect decision I/4 (Switzerland) or were inadequate (Austria).

65. Regarding timing of the notification to the affected Party with respect to notification of the Party of origin's public, either variable (Austria, Hungary, Netherlands, Sweden, United Kingdom) or good (Italy, Switzerland) experience was reported, though this experience was very limited. Poland and the United Kingdom remarked that it was difficult to know what stage the domestic EIA procedure had reached.

66. Respondents generally indicated a wish to participate in transboundary EIA procedures notified to them (Austria, Finland, Italy, Netherlands, Norway, Poland, Slovakia, Sweden). Bulgaria and Poland reported application of the criteria in Appendix III to the Convention to determine whether they wished to participate. In the Czech Republic, the views of relevant authorities were sought. Several respondents reportedly made a judgement on the likely significance of any transboundary impact (Hungary, Latvia, Lithuania, Netherlands, Norway, Poland, United Kingdom). The Netherlands also took into account the likely level of public interest.

67. The time available for a response was reported as being adequate (Austria, Croatia, Latvia, Norway, Switzerland) or too short (Finland, France, Netherlands, United Kingdom). Generally, respondents indicated flexibility with respect to a failure to comply with a time frame. All respondents reported that requests for deadline extensions were responded to positively.

68. Parties reported a number of problems experienced in organizing the notification procedure, including:

- Late notification (Bulgaria, Netherlands);
- Notification in the language of the Party of origin (Austria, Poland);
- Inadequate information in the notification (Bulgaria, Poland);
- Non-compliance with Espoo Convention's requirements (Poland);
- Difficulty understanding the Party of origin's EIA procedure (Sweden); and
- Problems with domestic procedures for processing notifications (France).

69. Those few respondents providing information on their experience of receiving requests for information reported that such requests had been responded to positively. No problems were reported.

70. Such requests were reported as being received by permanent bodies: the Espoo point of contact (Austria, Canada, Croatia, Finland, Poland, Sweden, Switzerland, United Kingdom), the provincial government (Austria, Switzerland), the Minister of Foreign Affairs (Canada), or the environment ministry (Bulgaria, Canada, Czech Republic, Hungary, Italy, Lithuania, Poland, Slovakia) or agency (Canada, Sweden). (Certain of these bodies may be equivalent in a Party.)

71. "Reasonably obtainable" information was interpreted by respondents in two main ways: easily obtainable, publicly available, existing, non-confidential information (Bulgaria, Croatia, Hungary, Netherlands, Poland, Slovakia, Switzerland, United Kingdom); or information that permits the assessment of transboundary impacts (Hungary). Kyrgyzstan made reference to its legislation on freedom of access to information. "Promptly" providing the information was interpreted as meaning within the time frame specified by or agreed with the Party of origin (Bulgaria, Finland, Switzerland, United Kingdom), or allowing a reasonable period for the collection of the requested information (Bulgaria, Canada, France, Hungary, Netherlands, Poland).

72. Public notification was reported as being the responsibility of various permanent bodies (Kyrgyzstan excepted): the Espoo point of contact (Finland, United Kingdom), the provincial or local government (Austria, Croatia, France, Hungary, Kyrgyzstan, Poland), the environment minister (Bulgaria, Czech Republic, Hungary, Norway, Slovakia) or agency (Canada, Sweden), the Minister of Foreign Affairs (Canada), the competent authority (Canada, Germany, Switzerland), the Party of origin (Netherlands) or the project proponent (Italy, Kyrgyzstan).

73. Various means were reported for publicizing the notification, including the Internet (eight respondents), public notice boards (Czech Republic, Hungary, Poland, Slovakia, Sweden), local or national newspapers (13 respondents), the official gazette (Croatia, Switzerland), radio (Czech Republic, Poland, Slovakia) or by direct contact with NGOs (Finland) or other stakeholders (Norway, Poland).

74. Respondents reported few difficulties. Bulgaria reported complaints about the limited distribution of the notification. Hungary commented on the difficulty of maintaining public interest in the lengthy Espoo procedure.

### III. PREPARATION OF THE EIA DOCUMENTATION

#### A. Questions to the Party in the role of ‘Party of origin’

75. Regarding the level at which the Party of origin consulted the affected Party in order to exchange information for the EIA documentation, respondents recorded that it was the responsibility of the EIA consultants or project proponent (France, Sweden) or of the environment ministry or competent authority (Poland), or that it was done through the point of contact in the affected Party (Canada, Croatia, Czech Republic, Hungary, United Kingdom).

76. Most respondents indicated that they provided all of the EIA documentation to the affected Party. Bulgaria and Canada indicated that they did so subject to confidentiality constraints, whereas Finland sought the advice of the affected Party. France noted that it also sent non-EIA project information.

77. Respondents described various means of identifying “reasonable alternatives” (App. II, subpara. (b)), with some confusion as to whether the question asked for a definition of “reasonable alternatives”, a process for identifying potential “reasonable alternatives” or a process for determining which candidate alternatives were “reasonable”. Taking the second of these interpretations, Estonia reported that EIA experts identified alternatives in consultation with the authorities, Finland relied on its EIA Act, whereas in Sweden the developer had to define alternative sites and designs.

78. “The environment” likely to be affected was identified by the Parties in different ways: according to the definition in the Convention (Armenia, Netherlands); by the EIA experts or project proponent (Croatia, Estonia, France, Switzerland, United Kingdom); in cooperation with the affected Party (Austria); and according to environmental legislation (Finland, Hungary, Italy, Kyrgyzstan, Sweden).

79. With regard to difficulties experienced in compiling the information described in Article 4, paragraph 1, and Appendix II, Croatia noted a lack of criteria, whereas Bulgaria reported a lack of information on the proposed activity or its potential transboundary impact.

80. Several respondents reported the transfer and reception of comments as being organized between the Espoo points of contact (Bulgaria, Canada, Croatia, Czech Republic, Finland). Other respondents indicated that comments were sent, either directly or via the point of contact, to the competent authority (France, Germany, Hungary, Netherlands, Switzerland) and integrated into the EIA documentation (Estonia). In Kyrgyzstan the comments are sent to the Environment Ministry, either directly or via the project proponent. The United Kingdom noted that it would have accepted comments directly from the public and authorities in an affected Party. Indeed, several Parties indicated a preference for comments being sent directly to the competent authority rather than via the point of contact (France, Germany, Netherlands, Switzerland). Only in Armenia was the recipient of comments not a permanent body.

81. The requirement to send comments “within a reasonable time before the final decision” was reported by the respondents as being interpreted as agreed by the points of contact (Croatia), according to the domestic EIA regulations (Bulgaria, Czech Republic, Estonia, Finland, Germany, Hungary, Kyrgyzstan, Netherlands, Norway, United Kingdom), corresponding to the period for domestic consultation (Canada, France, Switzerland) or according to bilateral agreements and the laws of the concerned Parties (Italy, Slovakia). The United Kingdom reported additional flexibility for transboundary EIAs. Several respondents

noted that the specified time frame was sometimes or often exceeded (Croatia, Finland, Netherlands).

82. Respondents generally indicated late comments were sometimes taken into account (Croatia, Czech Republic, Germany, Hungary, Netherlands, United Kingdom), though some indicated that the deadline for comments would expire (Kyrgyzstan, Switzerland). France, Hungary, Italy and the United Kingdom indicated that an extension was sometimes allowed. Moreover, if an affected Party made a reasonable request for an extension, all respondents indicated that they responded positively, if possible.

83. The comments received from an affected Party were used in different ways: either the EIA documentation was amended to take them into account, either by the Environment Ministry (Czech Republic) or by the project proponent (Estonia); or, more commonly, the comments were taken into account in the decision-making process (Finland, France, Germany, Hungary, Italy, Kyrgyzstan, Netherlands, Norway, Slovakia, Switzerland, United Kingdom).

## **B. Questions to the Party in the role of ‘affected Party’**

84. The content of the EIA documentation was reported by some respondents as sometimes being inadequate (Austria, Hungary, Netherlands, Poland, United Kingdom), with the affected Party having to request additional information (Bulgaria, Croatia, Netherlands). Other Parties reported that the documentation was adequate (Czech Republic, France, Norway, Slovakia, Sweden).

85. Respondents reported having made various comments on the EIA documentation sent to them, including regarding impact prediction methodology (Finland, United Kingdom), quantity and quality of the information (Austria, Poland), project description (Finland), consideration of alternatives (Bulgaria, Finland), potential transboundary impacts (Bulgaria, Hungary, Poland), adequacy of mitigation measures (Bulgaria, Finland, Hungary), and monitoring and post-project analysis (Bulgaria, Finland). France also reported commenting at a broader level, objecting to a category of projects being proposed.

86. Respondents reported the reception and transfer of comments to the Party of origin as being the responsibility of a permanent body: the point of contact (Austria, Croatia, Finland, France, Italy, Sweden, United Kingdom), the environment minister (Bulgaria, Czech Republic, Estonia, Hungary, Italy, Norway, Poland, Slovakia) or agency (Canada, Sweden), the minister of foreign affairs (Canada, France, United Kingdom), the competent authority (Canada, Germany, Kyrgyzstan) or local authorities (Kyrgyzstan). (Certain of these bodies may be equivalent in a Party.) In the Netherlands and Switzerland, the public sent comments directly to the Party of origin.

87. In determining a “reasonable time before the final decision” allowed for comments, affected Parties reported compliance with the Party of origin’s legislation or requirements (Austria, Bulgaria, Czech Republic, France, Netherlands, Switzerland, United Kingdom) or bilateral agreements, whether formal or informal (Armenia, Bulgaria, Italy), or both bilateral agreements and the legislation of the concerned Parties (Slovakia). Others made reference to practical domestic requirements (Hungary, Poland). All nine respondents that had requested an extension of a deadline indicated that their request had been accepted.

88. Most respondents indicated that the Party of origin had taken into account their comments as affected Party (Austria, Croatia, Finland, France, Netherlands, Sweden). The

Netherlands noted, however, that it had had to encourage a Party of origin to take account of some comments. Bulgaria and Poland reported a lack of feedback on how their comments were taken into account, while the United Kingdom recorded a lack of response to certain comments.

#### IV. TRANSFER AND DISTRIBUTION OF THE EIA DOCUMENTATION

##### A. Questions to the Party in the role of ‘Party of origin’

89. As Party of origin, respondents indicated different bodies responsible for the transfer of the EIA documentation: the competent authority (Austria, Canada, France, Germany, Netherlands, Norway, Switzerland), the point of contact (Austria, Croatia, Finland, Sweden, United Kingdom), the environment minister (Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Italy, Lithuania, Poland, Slovakia) or agency (Canada, Sweden), the project proponent (Kyrgyzstan) or the Minister of Foreign Affairs (Canada). Only Kyrgyzstan and the Netherlands indicated that this body was not permanent. The actual transfer was variously undertaken by post (13 respondents), electronic mail (8 respondents) or fax (Finland), or person-to-person at a meeting (Italy, Kyrgyzstan). Slovakia and Sweden also reported posting of documentation on an Internet web site.

90. Finland reported technical difficulties with the transfer, the Netherlands timing problems, whereas the United Kingdom indicated that points of contact in ministries of foreign affairs were not always familiar with the Espoo Convention’s requirements.

91. Responsibility for distribution of the EIA documentation in the affected Party was variously attributed but generally it was reported that the affected Party was responsible, with some respondents being more specific in terms of the environment ministry or the point of contact in the affected Party. Kyrgyzstan reported that the project proponent was responsible. The Netherlands reported a more direct role for its competent authority (as Party of origin) in distribution, assisted by the point of contact in the affected Party. Again, only Kyrgyzstan and the Netherlands indicated that the responsible body was not permanent. Italy and Switzerland noted that distribution within the affected Party was according to that Party’s legislation.

92. The question regarding to whom the EIA documentation was distributed in the affected Party yielded responses that cannot be meaningfully summarized or compared. Respondents answered this question in different ways: (a) listing recipients of the EIA documentation received directly from the Party of origin, e.g. the point of contact; or (b) listing recipients of the EIA documentation received either directly or indirectly via another body, e.g. the Party of origin sent the documentation to the point of contact in the affected Party, who then sent it on to the local environmental authorities. In addition, respondents answered according to (a) their intent, (b) their legislation, or (c) their experience, or lack of it.

93. Sweden and the United Kingdom reported difficulties identifying appropriate contact points in regional government or competent in Espoo matters, respectively.

##### B. Questions to the Party in the role of ‘affected Party’

94. Similarly to previous questions, the body responsible for receiving the EIA documentation in an affected Party was variously reported as being the point of contact (Austria, Canada, Croatia, Finland, Germany, Netherlands, Sweden, Switzerland, United Kingdom), the environment ministry (Bulgaria, Czech Republic, Estonia, Germany, Hungary,



Italy, Lithuania, Norway, Poland, Slovakia) or agency (Canada, Sweden), the competent authority (Austria, Canada, Germany, Kyrgyzstan) or the Ministry of Foreign Affairs (Canada). (In certain countries, two of these bodies may be one and the same.) In all cases, the body was reportedly permanent.

95. The documentation was received in paper and electronic forms (Austria, Hungary, United Kingdom), by post (11 respondents), electronic mail (Canada, Czech Republic, Finland, Italy, Slovakia) or fax (Finland), posted on the Internet (Slovakia) or directly at meetings (Italy).

96. Difficulties reported with the transfer included:

- Receipt of a single hard copy (no electronic version) making necessary scanning of the documentation for inclusion on an Internet web site (Bulgaria);
- A tight timetable (Czech Republic);
- The documentation being in the language of the Party of origin only (Poland); and
- Documentation not being sent or copied to the point of contact (United Kingdom).

97. The body responsible for distributing the EIA documentation in an affected Party was variously reported as being the point of contact (Austria, Croatia, Finland, Netherlands, Sweden, United Kingdom), the environment ministry (Bulgaria, Czech Republic, Estonia, Hungary, Italy, Norway, Poland, Slovakia) or agency (Canada, Sweden), the competent authority (Austria, Germany, Switzerland), the project proponent (Kyrgyzstan) or the Ministry of Foreign Affairs (Canada). (Certain of these bodies may be equivalent in a Party.) Only in Kyrgyzstan was the body not reportedly permanent.

98. The question regarding to whom the EIA documentation was distributed in the affected Party yielded responses that again cannot be meaningfully summarized or compared. Respondents answered this question in different ways: (a) listing recipients of the EIA documentation received directly from the point of contact in the affected Party; or (b) listing recipients of the EIA documentation received either directly or indirectly via another body, e.g. the point of contact in the affected Party sent the documentation to the local authorities, which then distributed it to the public in the local, affected area. In addition, respondents answered according to (a) their intent, (b) their legislation, or (c) their experience, or lack of it.

## **V. PUBLIC PARTICIPATION**

### **A. Questions to the Party in the role of 'Party of origin'**

99. In order to assure that the opportunity given to the public in the affected Party was equivalent to that in the Party of origin, respondents indicated various measures, including discussing with the affected Party how this might best have been achieved (Austria, Bulgaria, Sweden, Switzerland, United Kingdom). Austria also noted the importance of early distribution of the EIA documentation, whereas Canada and Germany reported that they applied their domestic legislation in full to the participation of the public in the affected Party. Estonia reported that the public in the affected Party was in fact consulted before its own. Croatia and Hungary noted that comments received were considered according to the same criteria, irrespective of whether they came from the public in the Party of origin or the affected Party. The Czech Republic and Hungary noted the importance of distributing all information to the affected Party. France limited itself to including public participation methodologies in the dossier sent to the affected Party, whereas Italy reported that all its transboundary projects had been subject to bilateral agreements that set out equal

requirements for public participation. The Netherlands assured equal participation at both the scoping and main consultation stages. Finland reported the importance of both timing and materials.

100. The information provided to the public of the affected Party included the project (planning) application (Austria, Hungary, Netherlands), the project description (Bulgaria, Switzerland), the notification (Czech Republic, Hungary, Poland), the original or revised EIA documentation (Austria, Bulgaria, Czech Republic, Estonia, Hungary, Italy, Netherlands, Poland, Switzerland), the EIA programme (Estonia), the EIA procedure (Netherlands), the expert opinion (Czech Republic) and the decision (Austria, Hungary). Canada listed a large range of information as being accessible to both its own public and the public in an affected Party; Norway and Slovakia too noted that the same information was made available to all. Kyrgyzstan suggested that all information would be available. The United Kingdom reported that all requested information was forwarded as it became available.

101. Responsibility for organizing public participation in the affected Party was reported by the Parties in their role of Party of origin as being with the affected Party (Austria, Bulgaria, Estonia, Hungary, Italy, Switzerland), the project proponent (Kyrgyzstan) or the environment ministry (Czech Republic, Estonia, Norway, Poland). The Netherlands, Poland and the United Kingdom noted the importance of their own competent authority working with the affected Party to determine the public participation procedure. In Finland, the point of contact in the affected Party, the regional environmental centre and the project proponent organized public participation jointly. In Croatia, it was the project proponent together with the competent authority in the affected Party that organized public participation. Similarly, in Slovakia, it was the project proponent in collaboration with the affected municipality. In Sweden, the project proponent prepared the information; the Swedish Environmental Protection Agency then transmitted and advertised it. Four respondents indicated that the body responsible for organizing this public participation was not permanent (Bulgaria, Kyrgyzstan, Netherlands, Sweden).

102. Bulgaria indicated that public participation in the affected Party was organized according to its legislation, whereas Italy and Switzerland referred to the affected Party's legislation. Kyrgyzstan noted the assistance of NGOs.

103. Respondents in their role of Party of origin reported on whether they initiated public hearings (or inquiries) in an affected Party. Several respondents said that they had not (Czech Republic, Netherlands, Sweden, Switzerland, United Kingdom), with this being the responsibility of the affected Party (Estonia, Hungary). Switzerland noted that it would have had to be organized in collaboration with the authorities in the affected Party and the project proponent. Similarly, Bulgaria and Croatia noted the need for discussion with the affected Party. Austria and Italy indicated that it might have been possible, whereas Norway reported that it had initiated public hearings at the time of notification and of release of the EIA documentation. Slovakia suggested it would be possible in certain circumstances.

104. The public of the affected Party, public authorities, organizations and other individuals were able to participate in public hearings in the Party of origin, according to all but one respondent in the role of Party of origin; Italy indicated that they normally would not have been able to participate. In Canada, participation was subject to the normal Canadian entry requirements; Kyrgyzstan similarly noted that participation was subject to border controls. Hungary noted that its legislation did not require it to notify the affected Party that the public hearing was taking place.

105. Austria, Canada, Norway, Slovakia and Switzerland reported that a joint public hearing might have been initiated, as did Bulgaria in the case of a joint EIA. Switzerland noted that a joint hearing would most likely have been organized in the Party of origin. Croatia and the United Kingdom indicated that no joint hearings were initiated.

106. Several respondents described informal guidelines and draft or signed bi- and multilateral agreements providing for the entry into the Party of origin of the public from the affected Party, usually defining practical matters such as invitation and translation (Austria, Germany, Hungary, Lithuania, Netherlands, Norway, Poland). Some of the same respondents and some others indicated that the public of an affected Party could anyway have participated under national legislation (Croatia, Czech Republic, Germany, Netherlands, Switzerland, United Kingdom).

107. Difficulties reported by respondents were interpretation (Czech Republic), a lack of public interest (Finland, Kyrgyzstan, Sweden), border controls (Kyrgyzstan), unjustified demands made of the project proponent (Kyrgyzstan), reconciling timing of public participation in joint EIAs (Italy), and identification of a suitable point of contact in the affected Party (United Kingdom).

108. Respondents reported various experiences of receiving comments from the public in the affected Party: Italy and Sweden noted few responses; Slovakia suggested that the number of responses depended on the potential impact of the project; the Netherlands and Switzerland reported that comments were sent direct to the competent authority; the Czech Republic considered the comments it received relevant but that they arrived late; Croatia remarked that it was difficult to distinguish the environmental concerns expressed in the comments; and the United Kingdom reported that the comments it received were not accompanied by an indication of their source, whether from government, NGOs or the public.

109. The respondents also indicated how the public participation was useful: identifying public concerns (Croatia, Netherlands, United Kingdom); providing more information about the affected area (Czech Republic, Kyrgyzstan, Slovakia); increasing transparency and accountability (Germany, Italy); possibly increasing acceptance of the final decision (Germany, United Kingdom); identifying alternatives and mitigation measures (Kyrgyzstan, Netherlands, Slovakia, United Kingdom); and leading to revision of the EIA documentation (Kyrgyzstan, Poland).

110. The public response was taken into account in the EIA procedure in various ways: inclusion in the EIA documentation (Estonia, Netherlands, Poland, Sweden); responded to by the project proponent (Bulgaria, Croatia); or taken into account by the competent authority in its decision (Bulgaria, Czech Republic, Finland, Hungary, Italy, Kyrgyzstan, Poland, Slovakia, Switzerland, United Kingdom).

## **B. Questions to the Party in the role of 'affected Party'**

111. Some respondents in their role of affected Party reported positively on the opportunity given to their public to participate in the EIA procedure (Austria, Croatia, Netherlands, Norway). Austria reported having organized public information meetings, having had its public invited to a public hearing in a Party of origin and having had access to a very useful Internet web site in the Party of origin. Italy and Switzerland reported implementation of joint EIAs. France had recently introduced a law on public inquiries for projects affecting France. However, Bulgaria reported a very limited opportunity to participate and Hungary reported

that it was only notified two years after the public participation had been completed. Sweden noted that despite effective publicity, public interest had been lacking.

112. The respondents reported that their public was informed of this opportunity by newspaper advertisement (nine respondents), press releases (Sweden), Internet web site notices (Austria, Poland, Switzerland), letters to the competent authority (Bulgaria, United Kingdom), contacting NGOs (Finland), public notice boards (Poland, Slovakia), local radio (Slovakia), decrees (France), or official gazette notices (Switzerland).

113. Two Parties (Croatia, Norway) reported public inquiries initiated in their country, as affected Party, by a Party of origin. Two respondents (Canada, United Kingdom) indicated that this would have required prior discussion and their approval.

114. All respondents providing a clear answer reported that they considered the opportunities provided to their public, as affected Party, were equivalent to those given to the public in the Party of origin. The United Kingdom stated that it depended on the information and amount of time given by the Party of origin.

115. Public participation in the affected Party was reported as being in accordance with the legislation of the Party of origin (Austria, Croatia, Czech Republic, Finland, Germany, Italy, Netherlands), the legislation of the affected Party (Bulgaria, Croatia, France, Hungary, Italy, Poland, Switzerland, United Kingdom), bi- or multilateral agreements (Bulgaria, Czech Republic, Italy, Netherlands, Poland) or ad hoc procedures (Sweden). Switzerland and the United Kingdom indicated that, though they applied domestic procedures, they also respected the timetable defined by the Party of origin.

116. More than three quarters of the respondents indicated that the public in the affected Party participated in the EIA procedure. Estonia reported that participation varied, whereas Italy, Sweden and the United Kingdom indicated that the public did not participate. Italy reported that this was probably due to a lack of interest, whereas Sweden noted that the projects notified to it were large, complicated and in remote areas.

117. Respondents' experiences with respect to the response of the Party of origin to public comments varied substantially: thorough bilateral discussions (Austria); taken into account in the final decision (Italy, Netherlands, Poland, Switzerland); or a lack of feedback (Bulgaria). Finland, France and Poland noted that public comments were combined with official ones in the response to the Party of origin.

## VI. CONSULTATION

### A. Questions to the Party in the role of 'Party of origin'

118. As Parties of origin, respondents described their limited but diverse experiences of consultations pursuant to Article 5 of the Convention. Bulgaria and Italy reported that these had occurred within joint Environmental Impact Assessment (EIA). Croatia reported that consultations were difficult when an affected Party is a priori against a project. France noted the necessity to extend deadlines to assure adequate consultation for projects subject to dispute. The Netherlands, Sweden and Switzerland described procedural matters. The United Kingdom reported on early and effective consultations with Ireland.

119. Only Finland and the Netherlands declared not having entered into consultations with the affected Party. However, France indicated that no consultations occurred if the affected

Party did not respond to the notification or indicated that it had no particular comments to make. Similarly, the Netherlands reported that no consultations were needed when it was determined that the transboundary impact was limited.

120. The respondents determined in various ways the meaning of “without undue delay” with respect to entering into consultations: immediately after notification (Slovakia); once the EIA documentation had been subject to quality evaluation (Bulgaria); bearing in mind practicalities and reciprocity (France); preferably once the affected Party has commented on the EIA documentation (Germany); once the EIA documentation has been sent to the affected Party (Hungary, Netherlands, Poland, United Kingdom); according to bilateral agreements and national legislation (Italy); or at the same time as consulting the domestic authorities (Sweden).

121. Again, the respondents interpreted the reasonable time frame for consultation in different ways, with France reporting time frames exceptionally extending to two years. The Netherlands provided a range of three weeks to three months for consultation, whereas Germany indicated that it depended on the issues to be discussed. Croatia and Italy indicated that it depended upon the equivalent domestic procedures in the concerned Parties. Italy also noted the relevance of bilateral agreements.

122. Respondents reported that in their limited experience consultations had covered matters referred to in paragraphs (a) to (c) of Article 5. Two respondents noted that consultations related to other matters: legal issues (Italy); and civil liability and scientific issues (Germany).

123. Consultations were reportedly held in the Party of origin (Croatia, Germany, Netherlands, Poland, Slovakia, United Kingdom), the affected Party (Italy, Norway), alternately in the two Parties (Hungary), or as determined case by case (Canada).

124. Several respondents indicated that consultations took place at the (federal) governmental level (Bulgaria, Canada, Croatia, Germany, Hungary, Italy, Norway), at the provincial or State or regional level (Bulgaria, Canada, Croatia, Germany, Italy, Norway), at the local level (Bulgaria, Canada), or among experts (Netherlands). In Poland and the United Kingdom, the level corresponded to the level of the competent authority, though, in the case of Poland, via the Environment Minister. In Slovakia, the level varied.

125. The consultations reportedly involved various bodies and individuals from the concerned Parties, depending on the complexity and contentiousness of the project, for example: the public (Bulgaria, Sweden); the ‘authorities’ (Sweden); national government officials (United Kingdom); central, regional or local authorities with environmental responsibilities (Bulgaria, Canada, Hungary, Switzerland); the ministry of foreign affairs (Canada, France); the environment ministry (France, Germany, Hungary, Italy) or agency (Canada); the appropriate sectoral ministry (Canada, France); the competent authority (Germany, Netherlands, Switzerland); experts (Canada, Netherlands, Switzerland, United Kingdom); the project proponent (Switzerland); and other stakeholders (Canada, Croatia, Sweden).

126. As to the means of communication for consultations, respondents indicated correspondence (Sweden, United Kingdom), meetings, or both (Bulgaria, Croatia, Germany, Hungary, Italy, Kyrgyzstan, Netherlands). Italy and the United Kingdom also noted the use of the telephone. France and Switzerland indicated that a whole range of communication means was envisaged.

127. The timing of the consultation was variously reported as being: at a very early stage (Italy); once it had been decided to proceed with the EIA procedure, so as to define the scope (Bulgaria, Switzerland); while identifying potential impacts (Kyrgyzstan); once the EIA documentation had been sent to the affected Party (Bulgaria, Germany, Hungary, Netherlands, Poland, United Kingdom); once the affected Party's comments on the EIA documentation had been considered (Germany); after information had been exchanged, but before the public inquiry (Croatia); well in advance of a final decision (Canada); ongoing, following notification (France); at each step in the EIA procedure (Germany, Italy); and at the very end of the EIA procedure (Italy).

#### **B. Questions to the Party in the role of 'affected Party'**

128. In the role of affected Party the respondents reported various though limited experiences of consultation: the need for several meetings to reach agreement (Austria); consultation only began once the EIA documentation had been produced (Bulgaria); consultation was effective (Croatia); consultation was limited to requests for additional information (Hungary); consultation was governed by bilateral agreements (Slovakia) that were sometimes established prior to notification, sometimes after (Italy); consultations only began once a decision had been made and at the request of the affected Party (Poland); and the use of informal contacts (United Kingdom).

129. Five of fourteen respondents indicated that they had been involved in EIA procedures where the Party of origin did not initiate consultations; the other seven reported that they had not been excluded in this way. The Netherlands reported having requested a consultation after it had received EIA documentation that had caused serious concerns. Sweden was not consulted regarding a project for which EIA was not mandatory. Poland, as noted above, requested consultation after a decision had been made without its participation.

130. Some respondents (Croatia, France, Italy, Netherlands, Slovakia, Sweden, United Kingdom) reported that consultations did generally cover the matters referred to in paragraphs (a) to (c) of Article 5, whereas Austria and Hungary said they did not. Bulgaria reported that the matters were partially covered. Four out of eleven respondents indicated that consultations covered other matters, with Poland noting the importance of compensation arrangements and Kyrgyzstan noting organizational matters.

131. Six Parties reported that consultations were held in the Party of origin, whereas France and the United Kingdom said that they were held in their country, i.e. the affected Party.

132. Several respondents indicated that consultations primarily took place at the (federal) governmental level (Austria, Bulgaria, Germany, Hungary, Italy, Netherlands, Poland, Sweden), at the provincial or State or regional level (Austria, Germany, Italy, Poland), at the local level (Bulgaria), or among experts (Netherlands). Croatia and France reported that meetings took place at all levels, whereas in Slovakia and the United Kingdom they were at the relevant levels.

133. The consultations reportedly involved various bodies and individuals from the concerned Parties, for example: the public (Bulgaria); national and local authorities (Croatia, Hungary, Kyrgyzstan, Netherlands, Switzerland); provincial or regional authorities (Austria, Poland); environmental authorities or agencies (Bulgaria, Hungary, Switzerland, United Kingdom); the Ministry of Foreign Affairs (France); the environment ministry (Austria, France, Germany, Italy, Poland); the appropriate sectoral ministry (France); the competent

authority (Germany); experts (Netherlands, Poland, Switzerland); the project proponent (Kyrgyzstan); NGOs (Bulgaria, United Kingdom); and other stakeholders (Bulgaria, Croatia).

134. As to the means of communication for consultations, respondents indicated correspondence (Poland, Sweden, United Kingdom), meetings (Austria, Hungary), or both (Bulgaria, Croatia, France, Germany, Italy, Kyrgyzstan, Netherlands). Italy also noted the use of the telephone and the United Kingdom reported that other means might also have been appropriate. Switzerland indicated that a whole range of communication means was envisaged.

135. In the role of affected Party, the timing of the consultation was variously reported as being: at a very early stage or at the scoping stage (Bulgaria, Switzerland, United Kingdom); after notification (France); during identification of potential impacts (Kyrgyzstan); during preparation of the EIA documentation (Bulgaria); once the quality of the EIA documentation had been confirmed (Bulgaria); once the EIA documentation had been received by the affected Party (Germany, Netherlands, United Kingdom); after consultation of the public (Austria); once the affected Party's comments on the EIA documentation had been considered (Germany, Poland); after information had been exchanged, but before the public inquiry (Croatia); at each step in the EIA procedure (Germany); according to bilateral agreements (Italy); as and when necessary (Slovakia); or according to the Party of origin's legislation (Sweden).

## VII. FINAL DECISION

### A. Questions to the Party in the role of 'Party of origin'

136. In the role of Party of origin, all respondents confirmed that the final decision contained the reasons and considerations on which the decision was based.

137. Respondents indicated that the decision often contained other information (Croatia, Slovakia, Sweden), for example: a project description (Austria, Finland, France); an overview of the licensing or decision-making procedure (Austria, Finland, Switzerland); an overview of the EIA (Austria); conditions imposed (Bulgaria, Czech Republic, France, United Kingdom); or deadlines and liability for non-compliance with the conditions (Bulgaria).

138. Croatia noted that if additional information on a significant transboundary impact became available at a later stage, it sometimes had difficulties assuring the cooperation of the project developer. No Party indicated that a request for consultation had been made because of such information, though France noted that an indemnity might have been due.

139. With regard to the taking into account in the final decision of the outcome of the EIA, comments from the affected Party and consultations, several respondents noted again that the final decision contained the reasons and considerations on which the decision was based (Canada, Finland, Germany, Hungary, Kyrgyzstan, Netherlands, Norway, Switzerland). Slovakia stated that the EIA and valid comments were taken into account. Hungary described the evaluation of comments as comprising factual, professional and legal analyses. Germany noted the importance of defining measures to prevent, reduce or mitigate adverse transboundary impacts. The Czech Republic noted that its final decisions included the opinion of the affected Party, or explained why it was not included. Estonia reported attaching the environmental requirements to the final EIA documentation. The United Kingdom explained that the final decision had to include an explicit declaration that the EIA documentation had been taken into account.

140. All respondents indicated that comments from the public and authorities in an affected Party were taken into consideration in the same way as domestic comments, though Germany noted that the affected Party's comments were expected to focus on transboundary impacts. No difficulties were reported in the preparation of the final decision.

141. The final decision was reported as being sent to various bodies and individuals in the affected Party: the point of contact (Canada, Croatia, Finland, France, Hungary, Italy, Netherlands, Sweden, United Kingdom); government authorities (Kyrgyzstan, Norway); the competent authority (Estonia, Kyrgyzstan); authorities responsible for EIA (Italy); ministries (Czech Republic); authorities that had been consulted or otherwise involved (France, Germany, Switzerland, United Kingdom); the project proponent (Kyrgyzstan); all those who had submitted comments (Netherlands); and others that had been identified by the affected Party (Canada). No respondent reported receiving an official complaint from the affected Party that the final decision was not easily understandable.

142. The means of publication of the final decision was described by a number of respondents: made publicly available (Austria, Bulgaria, Hungary, Netherlands, Poland, Sweden); published in newspapers (Bulgaria, France, Italy, United Kingdom) possibly including in the affected Party (Germany); advertised in the affected Party (Sweden); published in an official journal (France, Italy); placed on an Internet web site (Italy); or publication was as for domestic EIA (Czech Republic). Croatia reported that the decision was only made available to the parties in the administrative procedure.

143. Respondents indicated in very different ways how the provision of the final decision to the affected Party was organized. Some answered in terms of the practical means of transfer: it was sent by post (Austria, France, United Kingdom) or by electronic mail (Austria, United Kingdom). Some indicated senders: the point of contact (Bulgaria, Sweden); the environment ministry (Czech Republic, Hungary); or the competent authority (Netherlands, Switzerland). Some reported recipients: the point of contact (Bulgaria, France, Sweden, United Kingdom); or the consultees (France, United Kingdom). While others again described the procedural framework: bilateral agreements (Italy, Netherlands, Slovakia) or domestic legislation (Czech Republic, Hungary, Slovakia).

144. Respondents provided further information on which body was responsible for sending the final decision to the affected Party: the point of contact (Finland, Italy, Sweden, United Kingdom); the environment ministry (Bulgaria, Czech Republic, Estonia, Hungary, Poland, Slovakia) or agency (Canada, Sweden); the Ministry of Foreign Affairs (Canada); the competent authority (Canada, Croatia, Estonia, France, Germany, Netherlands, Norway, Switzerland); or the competent authority in cooperation with the point of contact (Austria). Italy once again made reference to bilateral agreements, whereas Kyrgyzstan reported that the same contact as used previously would be used at this stage also.

145. In terms of difficulties, only Sweden provided a response, noting a long delay between the EIA procedure and the arrival of the final decision.

146. Respondents described the possibility for an affected Party or its public to challenge a final decision in the courts of the Party of origin. Such a right to challenge was reported by several respondents (Austria, Croatia, Germany, Italy, Netherlands, Slovakia, Switzerland, United Kingdom). The Netherlands noted that the challenge would have been of the planning decision rather than of the EIA. Canada, too, reported the possibility to challenge through judicial review, noting that a person would have needed to demonstrate a direct effect on them, rather than a general interest; Germany too would have required that a direct effect be



demonstrated. Sweden reported that reciprocal arrangements existed among the Nordic States to allow such a challenge. The Czech Republic, France, Norway and Poland indicated that such a challenge would not have been possible.

147. The possibility of a legal challenge was reportedly described in the final decision issued by several Parties (Croatia, Germany, Hungary, Netherlands, Switzerland). Austria noted that it might have included such information. Canada remarked that it was for appellants to inform themselves of their rights to challenge decisions.

148. Respondents indicated that an appellant would have been informed of the result of an appeal (Canada, Norway, Slovakia, Sweden, United Kingdom), according to domestic law (Croatia, Hungary) or bilateral agreements (Austria). The Netherlands reported that appellants would not have been informed automatically, and Poland that they would not have been informed at all.

## **B. Questions to the Party in the role of ‘affected Party’**

149. In their role of affected Party, respondents described their experience of the content of the final decision and its provision to them by the Party of origin. The Netherlands and the United Kingdom reported difficulties in understanding fully the decisions received. Poland reported an incomplete final decision that did not make reference to its opinion. Sweden remarked that the decision arrived years after the EIA procedure was completed. Croatia declared that the decision enabled application of the necessary protection measures. Italy noted once again its experience related to joint EIAs, circumventing many of the problems that might have been expected with a transboundary EIA procedure.

150. The final decisions were received by various bodies and individuals in the affected Party, including: the point of contact (Austria, Bulgaria, Finland, France, Italy, Netherlands, Sweden, United Kingdom); the environment ministry (Austria, Bulgaria, Czech Republic, Norway, Poland, Slovakia) or agency (Canada, Sweden); the Ministry of Foreign Affairs (Canada); the provincial government (Austria); national and local authorities (Croatia, Kyrgyzstan); the project proponent (Croatia, Kyrgyzstan); or the competent authority (Germany, Kyrgyzstan, United Kingdom). France remarked that it was for the Party of origin to decide.

151. Distribution of the final decision within the affected Party was reportedly, and as appropriate, by official notice in the ‘mass media’ (Bulgaria), newspapers (Austria, Canada, Germany, Italy, Kyrgyzstan, Norway, United Kingdom), in the official journal (Italy), on an Internet web site (Austria, Canada, Germany) or through meetings (Kyrgyzstan). Several respondents simply reported public access to the decision (Austria, Bulgaria, Hungary, Netherlands, Norway, Switzerland). In Finland, the NGOs consulted were sent copies; in Sweden, all those consulted received copies. Canada reported that stakeholders were sent information on the decision. Poland reported distribution to local authorities. France remarked that Article 6 of the Convention did not impose such a requirement. Croatia, too, reported that the public was not informed.

152. No respondent reported difficulties with the publication of the final decision, though Croatia noted that it was not a public document. No respondent indicated clearly that there had been a complaint that a final decision was not easily understandable.

153. Seven respondents indicated that they sometimes had the right to make a legal challenge of a decision taken by the Party of origin (Austria, France, Germany, Italy,

Netherlands, Sweden, Switzerland); four others indicated that they did not (Czech Republic, Norway, Poland, Slovakia). The United Kingdom did not know. Sweden again made reference to reciprocal arrangements among the Nordic countries with respect to legal appeals. Austria noted that such possibilities existed in some of its neighbouring countries. France, Germany, Italy and Switzerland remarked that it depended on the domestic law of the Party of origin.

154. Austria, Sweden and the United Kingdom expected to be informed of the outcome of such an appeal. Armenia, Croatia and Poland did not expect to be informed, nor did Kyrgyzstan always, and the Netherlands indicated that it did not expect the Party of origin to be proactive in this regard.

155. The remaining questions relate to notification of the public of the final decision, rather than of the commencement of the EIA procedure. However, this was not apparent in the questionnaire causing some confusion among the respondents.

156. Austria reported that the notification of the public of the final decision included the (summary of the) decision, where it was possible to inspect it and the possibility of appeal according to bilateral agreements. The United Kingdom reported inclusion of the decision and its justification.

157. With the exception of Poland, the respondents indicated that the notification of the final decision in the affected Party contained the same information as that provided in the Party of origin, if possible (Czech Republic, Germany, Italy, Norway). The notification of the public was done as soon as possible after receipt of the final decision (Austria, Norway, United Kingdom).

## VIII. POST-PROJECT ANALYSIS

158. The respondents reported limited experience of post-project analysis, with a number of exceptions, generally relating to domestic EIA. Specifically, in Kyrgyzstan and the Netherlands, post-project analysis was always required, though it never occurred in the former. In Croatia, France, Norway, Poland, Slovakia and the United Kingdom it depended on individual cases. The requirement was under development in Switzerland. In Canada, it was dependent upon the type of EIA that had been undertaken, being compulsory for full EIAs. In France and Slovakia, post-project analysis was required for certain types of activities. In the Netherlands and Norway, it is the competent authority that initiated it. In the Netherlands, Poland Slovakia, the project proponent carried it out.

159. Those respondents that indicated why post-project analyses were undertaken, whether or not compulsorily, generally indicated that they were done to:

- Monitor compliance with the conditions in the licences;
- Review predicted environmental impacts for proper management of risks and uncertainties;
- Modify the activity or develop mitigation measures in case of harmful effects on the environment; and
- Provide the necessary feedback in the project implementation phase.

160. Only a few respondents indicated that post-project analyses were undertaken so as to learn from experience. There was no reported experience of informing another Party, or being

informed by another Party, of a significant adverse transboundary impact, identified as a result of post-project analysis.

## IX. TRANSLATION

161. Respondents indicated various approaches to overcoming language constraints during consultations. Some respondents reported that consultation was, if possible, in all the languages of the concerned Parties (Bulgaria, Germany, Norway, United Kingdom), others that interpreters were available as necessary (Austria, Netherlands). In other instances, it depended on bilateral agreements (Czech Republic, Poland, Slovakia). Several respondents noted use of English as a common language (Bulgaria, Estonia, Hungary, Italy, Sweden); Finland used Swedish and English in hearings; Kyrgyzstan generally used Russian. Sweden required that court submissions be in Swedish. Canada and Switzerland reported reliance on their national languages for consultation with their neighbours.

162. One respondent indicated that it translated all documents into the language of the affected Party (United Kingdom); others translated selected sections (Sweden), in some cases according to bilateral agreements (Austria, Czech Republic, Italy, Poland, Slovakia), domestic law (Hungary, Netherlands, Poland) or on the basis of reciprocity (Germany). Some respondents reported translation of some documentation into English (Bulgaria, Croatia, Estonia). In Canada, all documentation had to be produced in the national languages (English and French); translation into other languages would have been discussed with the affected Party. Norway did not provide translation of consultation documentation. Again, Switzerland reported reliance on its national languages for consultation with its neighbours.

163. Several respondents indicated that the final decision was, or would have been, translated into the language of the affected Party, as necessary and according to bilateral agreements (Austria, Germany, Hungary, Italy, Netherlands, Poland, Slovakia, Sweden, United Kingdom). However, three Parties (Croatia, Czech Republic, Norway) noted that the decision was not translated.

164. Several respondents also indicated that interpretation was, or would have been, provided in hearings, again as necessary and according to bilateral agreements (Austria, Bulgaria, Croatia, Czech Republic, Germany, Slovakia); again other respondents (Estonia, Netherlands, Norway, Sweden) indicated that they were not. Kyrgyzstan indicated that interpretation had not been necessary. This would appear to have been an area where there was still rather limited experience, especially in terms of hearings in an affected Party.

165. The respondents indicated that translation of basic information was generally the responsibility of the Party of origin (Austria, Croatia, Czech Republic, Estonia, Finland, Germany, Poland, United Kingdom); specifically, translated EIA documentation was provided by the project proponent (Bulgaria, Estonia, Germany, Hungary, Netherlands, Norway, Sweden, United Kingdom), whereas the formal notification was translated by the competent authority (Netherlands) or by the proponent (United Kingdom). Two respondents indicated that the affected Party was responsible for translation of its comments into the language of the Party of origin (Sweden – for the environmental court – and Finland). Five of the respondents indicated that responsibility for translation varied from case to case (Austria, Estonia, Netherlands, Poland) or according to bilateral agreements (Slovakia), whereas nine said that it did not. Kyrgyzstan reported that translation had not generally been necessary.

166. Several Parties reported problems with translation, particularly with respect to costs (Austria, Czech Republic, Estonia, Finland, Poland) and delays (Finland, Poland). Hungary

noted that translation into English, even rather than Hungarian, might be preferred because of quality problems.

167. Certain respondents indicated that they translated all documents when responsible (Bulgaria, Italy, United Kingdom); others translated only parts of the documentation as discussed with the affected Party (Austria, Finland, Sweden), or according to bilateral agreements (Czech Republic, Germany, Italy, Poland, Slovakia) or domestic law (Hungary, Netherlands). Germany noted that, unfortunately, there was so far no provision in the Convention regarding responsibility for any translation, so there could not be any legal responsibility as such for translations. Some respondents reported translation of some documentation into English (Croatia, Estonia). As mentioned above, in Canada, all documentation had to be produced in the national languages (English and French); translation into other languages would have been discussed with the affected Party.

168. Several respondents reported reliance on translation into the language of the affected Party (Czech Republic, Netherlands, United Kingdom), whereas others noted the use of either English or the language of the affected Party (Bulgaria, Croatia, Sweden). Estonia noted the use of English only. Germany, too, used the language of the affected Party, except when dealing concurrently with several States on the shores of the Baltic Sea, when English was used. In Canada, all documentation had to be produced in the national languages (English and French). Thus, English was reported as being used as a common language, even where it was not the language of any of the concerned Parties (notably Estonia, Hungary, Italy); the other official UNECE languages (French and Russian) were only reported as being used where they were the or a national language of one of the concerned Parties.

169. As Party of origin, translation costs for the EIA documentation were reported by most respondents as being the responsibility of the developer; translation of notifications and decisions was reported by several respondents as being paid for by the authorities (Germany, Netherlands, Poland). As affected Parties, Hungary and Poland reported that the Ministry of Environment and the regional authorities, respectively, were responsible for translation costs. Germany and the Netherlands noted that the competent authority was often responsible for the costs of translation and interpretation. In the United Kingdom, the developer was encouraged to bear all costs, but the Government was ultimately responsible.

170. No respondent reported problems assuring the quality of translations, with professional translators being used, nor did the respondents experience problems as the affected Party.

171. However, only half of the ten Parties providing a meaningful response to the relevant question indicated that, generally, sufficient documentation was translated to enable participation in the EIA procedure. The remaining respondents indicated both good and bad experiences.

## **X. CONTACT POINTS**

172. The list of points of contact appended to decision I/3 and updated via the Convention's web site was generally considered useful by the respondents, but concerns were expressed regarding its being up to date and problems occurring if no named individual was identified (i.e. only an organization, though the Czech Republic noted that because of staff movements it was difficult to name an individual). Additional points of contact had been established informally, to satisfy requirements of decentralized government or as a result of bi- or multilateral agreements with other Parties.

## **XI. INQUIRY PROCEDURE**

173. No Party reported application of the inquiry procedure.

## **XII. SETTLEMENT OF DISPUTES**

174. Only one Party reported a dispute, which had yet to be resolved.

## **XIII. BILATERAL AND MULTILATERAL AGREEMENTS**

175. Parties reported on their bi- and multilateral agreements with their geographical neighbours, as summarized in the list below. Few agreements had been finalized, but many draft agreements had been prepared and informal agreements established:

- Austria: draft agreements with the Czech Republic and Slovakia; informal agreements with Liechtenstein and Switzerland.
- Czech Republic: draft agreements with Austria, Germany, Poland and Slovakia.
- Estonia: agreements with Finland and Latvia.
- Finland: agreement with Estonia.
- Germany: draft agreements with the Czech Republic, the Netherlands and Poland; planned informal agreements with Austria, Liechtenstein and Switzerland; Sar-Lux-Lor Recommendation with France and Luxembourg; tripartite recommendation with France and Switzerland.
- Italy: agreement with Croatia; intergovernmental conference with France; project-specific agreements with Austria and Switzerland.
- Latvia: agreement with Estonia.
- Lithuania: draft agreements with Latvia and Poland.
- Netherlands: draft agreements with the region of Flanders (Belgium) and Germany.
- Norway: Nordic Environmental Protection Convention with Denmark, Finland and Sweden.
- Poland: draft agreements with the Czech Republic, Germany and Lithuania; talks with Belarus, Slovakia and the Ukraine.
- Slovakia: agreements being drafted with Austria, the Czech Republic, Hungary and Poland.
- Switzerland: informal agreements with Austria and Liechtenstein.

176. Armenia, Bulgaria, Croatia, France, Hungary and the United Kingdom reported having no such agreements with their neighbours. Furthermore, no agreements were reported for long-range transboundary impacts, i.e. to address instances where a proposed activity was likely to have an adverse environmental impact on another Party that was not an immediate geographical neighbour.

177. The agreements that did exist, whether formal, informal or draft, were based to varying degrees on the provisions of Appendix VI (Elements for bilateral and multilateral cooperation), with some (e.g. the informal agreements between Austria, Liechtenstein and Switzerland) being in line with the Appendix, whereas some others had little in common and

might even have pre-dated the Convention (e.g. the Nordic Environmental Protection Convention).

#### **XIV. RESEARCH PROGRAMME**

178. The only reported research directly related to EIA in a transboundary context was a project involving Germany and Poland.

#### **XV. GENERAL QUESTIONS**

179. Some respondents reported that minor variations might have occurred in the implementation of the Convention within their country as a result of bilateral agreements (Austria, Hungary, Italy, Netherlands). Italy and Switzerland indicated that variations might have occurred because of regional (within country) responsibilities. More than half of the respondents indicated that there should not have been any variations.

180. Most respondents indicated that a single point of contact within the equivalent of a ministry of environment or a national EIA agency was responsible for the coordinated application of the Convention. In Germany, the various competent authorities were responsible. In France, it was a joint responsibility of the Ministry of Foreign Affairs and the Ministry of Environment and Sustainable Development.

181. Four fifths of the respondents indicated that a single body was responsible for collecting information on all transboundary EIA cases. France, Germany, Kyrgyzstan and the Netherlands indicated that there was no such body. Generally, the body responsible was the same as that responsible for the coordinated application of the Convention.

182. Austria and Poland each reported a single difference of opinion with a Party of origin regarding interpretation of the terms “major” or “significant” (see Part I of questionnaire).

183. Several respondents described cross-border projects, employing various organizational approaches: joint EIA (Bulgaria, France, Italy, Switzerland) done under bilateral agreements (France, Italy); and Parties being in turn considered both Party of origin and affected Party (Germany, Poland).

#### **XVI. EXPERIENCES AND OPINIONS**

184. All respondents indicated that the questionnaire covered every aspect of the implementation of the Convention. However, several respondents indicated that the questionnaire was too long, detailed and repetitive (Croatia, Estonia, France, Germany, Italy, Sweden, Switzerland and United Kingdom) and that a shorter, more concise questionnaire might elicit more and better responses. Further changes to the questionnaire were suggested.

185. Several Parties reported problems with the implementation of the Convention, some of which had already been described earlier in the questionnaire. Several respondents indicated the need for bilateral agreements to address detailed procedural arrangements (Bulgaria, Poland). Translation and its costs were again highlighted as issues (Austria, Poland). A number of further problems were identified where certain Parties required clarification of the Convention's provisions. Hungary reported practical staffing limitations. Kyrgyzstan noted that not all its neighbours were Parties to the Convention. The Republic of Moldova reported poor domestic legislation and a lack of experience in transboundary EIA.

186. Suggestions as to how problems might have been resolved included:

- Good practice guidance, which had been provided and was welcomed (Bulgaria, Croatia, Netherlands, Switzerland, United Kingdom);
- Good bilateral and multilateral agreements (Czech Republic, Poland);
- Amendments to the Convention, including a new provision on responsibility for translation (Austria, Germany), revisions to Appendix I (Estonia, Germany), clarification of the obligation in Article 5 to hold consultations even when the affected Party has indicated it does not wish to be consulted further (Germany) and a requirement for a separate chapter in the EIA documentation on significant adverse transboundary impacts (Finland, Hungary); and
- Additional guidelines on the different stages of the process defined in the Convention, and training in transboundary EIA using case studies from other countries (Republic of Moldova).

### **Conclusions**

187. A questionnaire was circulated to Parties regarding the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context. An analysis of the information provided in the 23 responses to the questionnaire received by the end of 2003 reveals the increasing application of the Convention and the continuing development of bilateral and multilateral agreements to support its implementation. However, the analysis also reveals a number of possible<sup>7</sup> weaknesses or shortcomings in the Convention's implementation. These weaknesses point at potential and necessary improvements in the application of the Convention. To guide and focus the future work under the Convention, they are listed and summarized below:

- The points of contact on the Convention's web site were not always correct;
- The points of contact were not always competent in the application of the Convention;
- The content of the notifications issued by the Parties of origin were not always compliant with Article 3, paragraph 2, of the Convention and with decision I/4 of the Meeting of the Parties;
- The final decisions made by the Parties of origin were not always provided to the affected Parties as soon as possible after they had been taken;
- The contents of the final decisions made by the Parties of origin did not always comply with Article 6, paragraph 2, of the Convention;
- The results of research programmes undertaken by the Parties were not always exchanged with the other Parties, in compliance with Article 9 of the Convention;
- The public of the concerned Parties was not sufficiently encouraged to participate in procedures under the Convention; and
- Given recorded difficulties with regard to the languages used, there was still a lack of bilateral and multilateral agreements among Parties to address in particular what documents should be translated, who should translate them and who should cover the costs of translation.

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<sup>1</sup> The ENIMPAS database on EIA in a transboundary context was later to be closed by decision III/6 of the Meeting of the Parties.

<sup>2</sup> The most significant change was to drop a condition “If not,” from the start of a number of subsidiary questions, to which the main question required only a yes or no response. As a result, there would appear a rather poor link between whether the main question is answered yes or no, and whether the subsidiary question is answered. The following questions were changed in this way: II.A.1.1 (c), II.A.3.2 (c), II.B.2.2 (b), II.B.3.1 (b), III.A.2.1 (c), III.B.2.2 (b), IV.A.1.1 (b), IV.A.1.2 (b), IV.B.1.1 (b), IV.B.1.2 (b), V.A.1.2 (b) and XVI.A.1.1.

<sup>3</sup> Versions of the main questionnaire completed in 2002 were used for Croatia, Hungary, Latvia, Norway and Poland. The other Parties returned the questionnaire in 2003, though only Bulgaria, the Czech Republic, France, Italy and Switzerland used the mid-2003 version of the questionnaire. Canada and Sweden did not reply using the questionnaire so it was not possible to determine which version of the questionnaire they were answering.

<sup>4</sup> Belgium returned the questionnaire in March 2004, too late to be included in this document.

<sup>5</sup> Denmark returned the questionnaire in February 2004, also too late to be included in this document.

<sup>6</sup> Versions of the domestic questionnaire completed in 2002 were used for Bosnia and Herzegovina, Latvia, Poland and the Republic of Moldova.

<sup>7</sup> There are some limitations in the information gathered through the questionnaire, as outlined in paragraphs 17 to 23 above.



## **Annex II**

### **DECISION III/2 REVIEW OF COMPLIANCE**

#### **The Meeting,**

**Recalling** Article 11, paragraph 2, of the Convention, and decision II/4 on the review of compliance,

**Determined** to promote and improve compliance with the Convention,

**Having reviewed** the structure and functions of the Implementation Committee, bearing in mind the possible involvement of the public,

**Recognizing** the importance of rigorous reporting by Parties of their compliance with the Convention, and noting the first review of the implementation of the Convention as referred to in its decision III/1,

**Recalling** that Parties may make submissions to the Committee regarding their own compliance, in accordance with paragraph 4 (b) of the appendix to decision II/4,

1. **Encourages** Parties to bring issues concerning their own compliance before the Committee;

2. **Decides** that the structure and functions of the Committee and the procedures for review of compliance shall be those set out in the appendix to this decision, amending and replacing the appendix to decision II/4;

3. **Resolves** that the procedure for the review of compliance shall apply to the Convention and any amendments to it;

4. **Encourages** the application of the procedure for the review of compliance to the Protocol on Strategic Environmental Assessment and to any future protocols to the Convention, in accordance with their relevant provisions;

5. **Decides** to keep under review and develop if necessary the structure and functions of the Committee at the fourth meeting of the Parties in the light of experience gained by the Committee in the interim, including with public involvement, and in this context requests the Committee to prepare any necessary proposals for the fourth meeting of the Parties;

6. **Recommends** that further measures should be taken to strengthen reporting, and in this respect welcomes decision III/9 on the work plan; and

7. **Welcomes** the reports of the first five meetings of the Implementation Committee and requests the Committee to consider developing criteria for dealing with information other than submissions from Parties and proposals on membership of the Committee when considering matters under the Protocol on Strategic Environmental Assessment.

## **Appendix**

### **STRUCTURE AND FUNCTIONS OF THE IMPLEMENTATION COMMITTEE AND PROCEDURES FOR REVIEW OF COMPLIANCE**

#### **Structure**

1. (a) The Committee shall consist of eight Parties to the Convention. Each of the eight Parties shall appoint a member of the Committee. At their second meeting, the Parties elected four Parties to the Committee for two terms and four Parties for one term. At each session thereafter, the Meeting of the Parties shall elect four new Parties for two terms. Outgoing Parties may be re-elected once, unless in a given case the Meeting of the Parties decides otherwise. The Committee shall elect its own Chair and Vice-Chair;

(b) For the purposes of this paragraph "term(s)" means the period that begins at the end of one meeting of the Parties and ends at the end of the next meeting of the Parties.

#### **Meetings**

2. The Committee shall, unless it decides otherwise, meet at least once a year. The secretariat shall arrange for and service its meetings. The agenda for each meeting shall be made publicly available before the meeting.

3. Its meetings shall be open to other Parties and the public, unless the Committee decides otherwise. Parts of meetings dealing with specific submissions relating to compliance shall not be open to other Parties or to the public, unless the Committee and the Party whose compliance is in question agree otherwise.

#### **Objective and functions of the Committee**

4. The objective of the Committee shall be to assist Parties to comply fully with their obligations under the Convention, and to this end it shall:

(a) Consider any submission made in accordance with paragraph 5 below or any other possible non-compliance by a Party with its obligations that the Committee decides to consider in accordance with paragraph 6, with a view to securing a constructive solution;

(b) Review periodically, in accordance with guidelines or criteria formulated by the Meeting of the Parties, compliance by the Parties with their obligations under the Convention on the basis of the information provided in their reports;

(c) Prepare the reports referred to in paragraph 11 with a view to providing any appropriate assistance to the Party or Parties concerned, for example by clarifying and assisting in the resolution of questions; providing advice and recommendations relating to procedural, technical or administrative matters; and providing advice on the compilation and communication of information; and

(d) Prepare, at the request of the Meeting of the Parties, and based on relevant experience acquired in the performance of its functions under subparagraphs (a), (b) and (c) above, a report on compliance with or implementation of specified obligations in the provisions of the Convention.

#### Submission by Parties

5. A submission may be brought before the Committee by:

(a) One or more Parties to the Convention that have concerns about another Party's compliance with its obligations under that instrument. Such a submission shall relate specifically to those concerns and shall be addressed in writing by the focal point of the Party in question to the secretariat and supported by corroborating information. The secretariat shall, within two weeks of receiving a submission, send a copy of it to the focal point of the Party whose compliance is at issue. Any reply and information in support thereof shall be submitted to the secretariat and to the focal points of the Parties involved within three months or such longer period as the Parties involved agree. The secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which shall consider the matter as soon as possible; or

(b) A Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under the Convention. Such a submission shall be addressed in writing to the secretariat and explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. The secretariat shall transmit the submission to the Committee, which shall consider it as soon as possible.

#### Committee initiative

6. Where the Committee becomes aware of possible non-compliance by a Party with its obligations, it may request the Party concerned to furnish necessary information about the matter. Any reply and information in support shall be provided to the Committee within three months or such longer period as the circumstances of a particular case may require. The Committee shall consider the matter as soon as possible in the light of any reply that the Party may provide.

#### Information gathering

7. To assist the performance of its functions under paragraph 4 above, the Committee may:

(a) Request further information on matters under its consideration, through the secretariat;

(b) Undertake, at the invitation of the Party of origin and/or the affected Party, information gathering in the territory of that Party;

(c) Consider any information forwarded by the secretariat concerning compliance with the Convention; and

(d) As appropriate, seek the services of scientific experts and other technical advice or consult other relevant sources.

8. The Committee shall ensure the confidentiality of information that has been provided to it in confidence, inter alia, with regard to the reports of its meetings.

#### Entitlement to participate

9. A Party in respect of which a submission is made or which makes a submission shall be entitled to participate in, or be present during, the consideration by the Committee of that submission, but shall not take part in the preparation and adoption of any report or recommendations of the Committee. The Committee shall decide on the content of any report or recommendations by consensus, send a copy of the draft report or recommendations to the Parties concerned, and shall take into account any representations from such Parties in the finalization of the report.

10. A member of the Committee that represents a Party in respect of which a submission is made or which makes a submission shall be entitled to participate in the consideration by the Committee of that submission but shall not participate in, or be present during, the preparation and adoption of any part of a report or recommendation of the Committee that relates to that submission.

#### Committee reports to the Meeting of the Parties

11. The Committee shall report on its activities at each meeting of the Parties through the secretariat and make such recommendations as it considers appropriate, taking into account the circumstances of the matter, regarding compliance with the Convention. Each report shall be finalized by the Committee not later than ten weeks in advance of the session of the Meeting of the Parties at which it is to be considered. Every effort shall be made to adopt the report by consensus. Where this is not possible the report shall reflect the views of all the Committee members. Committee reports shall be available to the public.

#### Competence of Committee members

12. If as a result of the operation of paragraph 10 the size of the Committee is reduced to five members or less, the Committee shall forthwith refer the matter in question to the Meeting of the Parties.

#### Consideration by the Meeting of the Parties

13. The Meeting of the Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate general measures to bring about compliance with the Convention and measures to assist an individual Party's compliance. The Parties shall make every effort to reach a decision by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the decision shall, as a last resort, be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

Relationship to settlement of disputes and the inquiry procedure

14. The present compliance procedure, as a non-adversarial and assistance-oriented procedure, shall be without prejudice to the settlement of disputes provisions in Article 15 of the Convention.

15. Where a matter is being considered under an inquiry procedure under Article 3, paragraph 7, of the Convention, that matter may not be the subject of a submission under this decision.

**Annex III**

**DECISION III/3  
STRENGTHENING COOPERATION WITH OTHER UNECE CONVENTIONS**

**The Meeting,**

**Recalling** its decision II/5 on recent developments and links with other UNECE conventions,

**Respecting** the autonomous legal status of the individual UNECE conventions,

**Wishing** to promote cooperation with the other UNECE environmental conventions,

**Noting** that environmental impact assessment is a cross-cutting environmental management tool,

**Having considered** the outcome of the workshop on strengthening cooperation with other UNECE conventions (MP.EIA/WG.1/2003/7, annex),

**Requests** the Working Group on Environmental Impact Assessment to identify synergies with other environmental conventions, taking account of the joint meetings of the Bureaux of the conventions and the Bureau of the Committee on Environmental Policy.

**Annex IV**

**DECISION III/4  
GUIDELINES ON GOOD PRACTICE AND  
ON BILATERAL AND MULTILATERAL AGREEMENTS**

**The Meeting,**

Recalling its decision II/1 on bilateral and multilateral cooperation and its decision II/2 on the practical application of the Convention on Environmental Impact Assessment in a Transboundary Context,

Also recalling Article 8 of the Convention, stipulating that the Parties may continue existing or enter into new bilateral or multilateral agreements or other arrangements in order to implement their obligations under the Convention, and Appendix VI to the Convention, containing elements for bilateral and multilateral cooperation,

Having considered the outcome of a workshop on good practice and on bilateral and multilateral agreements,

1. Endorses the Guidance on the Practical Application of the Espoo Convention, as appended to this decision;
2. Notes that the Parties can facilitate and greatly improve the practical application of the Convention through the appropriate organization of tasks and responsibilities within their countries;
3. Recommends that the Parties should take into account the contents of the Guidance when defining national procedures for the implementation of the Convention and when applying the Convention to specific cases;
4. Calls on the Parties to distribute the Guidance to authorities, specialists, developers, non-governmental organizations and other stakeholders to raise awareness of the contents of the Convention and to support them in applying the Convention;
5. Invites the Parties to provide information to the Working Group on Environmental Impact Assessment on activities to which they have applied the Guidance;
6. Also invites the Parties to submit to the secretariat their bilateral and multilateral agreements and arrangements, or electronic links thereto, which the secretariat shall make available on the Convention's web site.

## **Appendix**

### **GUIDANCE ON THE PRACTICAL APPLICATION OF THE ESPOO CONVENTION <sup>\*/</sup>**

#### **Contents**

#### **I. Introduction**

- (i) The mandate
- (ii) The need for systematic approaches in applying the Espoo Convention
- (iii) The Espoo Convention in the context of international environmental law

#### **II. Practical solutions in applying the Espoo Convention**

- (i) Responsibilities
- (ii) Management
- (iii) The procedure
- (iv) Initiating the process
  - Screening
  - Institutional arrangements
  - Financial aspects
  - Time schedule
- (v) The notification
  - Timing the notification
  - Contents of notification
  - Responding to the notification and confirmation of participation
- (vi) Transmitting information
  - Selection of material
  - Submitters and receivers of information
  - Public participation
  - Translation of documents
- (vii) Screening the likelihood of significant adverse transboundary impacts by the affected Party
- (viii) Preparation of the EIA documentation
- (ix) Consultation
  - Timing
  - Issues
  - Roles of different stakeholders in consultations
  - Means to be used in consultations
- (x) Final decision
  - Consultations on the basis of additional information after the decision
  - Responsibilities

#### **III. Specific issues**

- (i) Dispute prevention and settlement
- (ii) Long-range impacts
  - The activities and the impacts
  - The area
  - Dealing with the complexity

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<sup>\*/</sup> The Guidance has been reproduced as received by the secretariat.



(iii) Joint EIA

Getting started

Notification

The assessment

After the assessment

(iv) Policies, plans and programmes

(v) Post-project analysis

IV. Transposition into national legislation

V. Creating bi- and multilateral agreements and arrangements

## I. INTRODUCTION

1. The Convention on Environmental Impact Assessment in a Transboundary Context, the so-called Espoo Convention (<http://www.unece.org>), hereafter the Convention, was signed in 1991. It requires that assessments be extended across borders between Parties of the Convention when a planned activity may cause significant adverse transboundary impacts. The Convention was a response to a growing concern about transboundary emissions and the emergence of environmental impact assessment as a tool to reduce the negative environmental effects of new activities.

2. The Convention came into force in 1997. Since then the number of Parties and the practical application of the Convention have increased steadily. This guidance document has been written for competent authorities in the Parties to the Convention. It provides hints and suggestions that can improve the practical application of the Convention and that may be used in forming bi- and multilateral agreements among Parties that have to deal with transboundary impacts on a regular basis. The overall approach taken in this guide is that the application of the Convention can and preferably should be part of a systematic way of managing international environmental requirements. In practice this means that all procedural stages should be documented and that clear responsibilities should be identified in advance for all the stages of the application of the Convention.

3. The guide may also be useful to the national Points of Contact regarding the notification as well as other local, regional, state or national authorities and to Non-Governmental Organisations (NGO), International Financing Institutions (IFI) and the public who are likely to become involved in the practical application of the Convention. The guide goes through each of the steps in the application of the Convention and identifies good practices based on accumulated experiences from the different Parties to the Convention.

4. The guide focuses on issues that

- have been identified to cause difficulties when applying the Convention, or that
- are important to take into consideration when developing bi- or multilateral agreements to support the application of the Convention.

### (i) The mandate

5. The Second Meeting of the Parties (Sofia, February 2001) to the Convention on Environmental Impact Assessment in a Transboundary Context – the Convention, decided to include the elaboration of guidance on practical application of the Convention and on bilateral and multilateral agreements and arrangements in the work plan for 2001-2004. The Netherlands, Finland and Sweden took the responsibility of acting as lead countries of the activity. The lead countries contracted the Finnish Environment Institute (SYKE) to co-ordinate the practical work.

6. Previous work under the work plan for 1998-2000 of the Convention has provided material to support the practical implementation of the Convention. The reports "Practical Application of the Espoo Convention" (Report of the second Meeting of the Parties, Annex II, <http://www.unece.org/env/eia>), "Bilateral and Multilateral co-operation in the framework of the Espoo Convention" (Report of the second Meeting of the Parties, Annex I, <http://www.unece.org/env/eia>) and "Current Policies, Strategies and Aspects of Environmental Impact Assessment in a Transboundary Context" (Environmental Series No. 6, UN/ECE, 1996) (<http://www.unece.org>) give background information and additional

suggestions. This guide provides a compilation of practical ideas for those involved in transboundary EIAs according to the Convention.

## **(ii) The need for systematic approaches in applying the Convention**

7. Transboundary assessments according to the Convention have proved worthwhile. The transboundary approach ensures that assessments analyse entire spatial scale of impacts. In addition, transboundary assessments mitigate tensions between concerned Parties by providing information before rumours develop and by letting citizens in the affected Party present their opinions on activities that may have an impact on their environment.

8. Environmental impact assessments (EIA) are multidisciplinary in nature. The issues that arise are also affected by the knowledge and values of the different stakeholders and the public. EIAs in a transboundary context (henceforth transboundary assessments) are even more complex. In neighbouring Parties the EIA-process may be differently structured in legislation or carried out in practice in different ways depending on the historical and cultural background. Differences are commonly seen in criteria for identifying activities that should be subject to EIA, in the criteria for what is regarded as a significant environmental impact and in the philosophy of EIA including issues such as the role of EIA in decision making and the role of the public in the EIA.

9. Neighbouring Parties can reduce difficulties that arise due to differences in legislation and practice by increasing the exchange of information on legislation and practices. Difficulties in applying the Convention have also arisen due to too complicated or poor organisation within a Party. Clear rules of procedure and with clearly identified responsibilities to organise the transboundary assessments have proved to help in carrying out the assessments.

10. For those Parties that frequently apply the Convention, bilateral or multilateral agreements/arrangements may be a practical way to overcome difficulties due to discrepancies between legislation and practice of the Parties. Henceforth the term “agreement” will be used to mean any kind of “bilateral and multilateral agreement or other arrangement” for transboundary assessments. Such agreements can provide a tailored framework for running the assessment procedure between the two Parties. These agreements are also important in regions where joint EIAs are common.

## **(iii) The Convention in the context of international environmental law**

11. The Convention introduced a new way of dealing with transboundary impacts: the transboundary environmental impacts assessment (EIA). Environmental impact assessment existed in the national legislation of most Parties and thus it was technically possible to extend the assessment across the border under the Convention. This extension had also been made in the Council Directive on the assessment of the effects of certain public and private projects on the environment (No. 85/337/EEC, 03 2175, 5.7.1985, p. 40) as amended by Council Directive (No. 97/11/EC, 03 273, 14.3.1997, p.5) (<http://europa.eu.int/comm/environment/eia>) of the European Union and with the Convention this demand has been extended to cover all Parties to the Convention.

12. Although the Convention is the most specific piece of international legislation for transboundary impacts it is not the only one. For example the Convention on Long-range Transboundary Air Pollution (1979) (<http://www.unece.org/env/lrtap/>), the Convention on early notification on nuclear accidents (1986)

(<http://www.iaea.or.at/worldatom/Documents/Infcircs/Others/inf335.shtml>) and the Convention on the control of transboundary movements of hazardous wastes and their disposal (1989) ([http://untreaty.un.org/English/TreatyEvent2002/Basel\\_Conv\\_16.htm](http://untreaty.un.org/English/TreatyEvent2002/Basel_Conv_16.htm)) also deal with related issues. There are also three UN/ECE environmental conventions that refer to the Convention. These are the Convention on the Transboundary Effects of Industrial Accidents (<http://www.unece.org/env/teia>), The Convention of the Protection and Use of Transboundary Watercourses and International Lakes (<http://www.unece.org/env/water>) and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (<http://www.unece.org/env/pp>). Many general environmental global conventions such as the Biodiversity Convention (1992) (<http://www.biodiv.org/>) set requirements for environmental impact assessments and explicitly encourage also transboundary assessments.

## **II. PRACTICAL SOLUTIONS IN APPLYING THE CONVENTION**

### **(i) Responsibilities**

13. The competent authority is the authority that is designated by the Party to carry out the practical application of the Convention nationally and may also have the decision-making powers regarding a proposed activity. The competent authority may be, depending on the nature of the issue, a local, regional, state or national authority. The Point of Contact is the authority, which is designated by the Party to be the official contact towards other Parties and towards the Secretariat of the Convention. An updated list of the Points of Contact is available from the Secretariat or from the website: <http://www.unece.org/env/eia>.

14. Although the practical application is the responsibility of the competent authority, some tasks are clearly part of the mandate of the Point of Contact. The responsibilities of the two should be made clear and the information flow should be ensured between these two authorities in clear national rules of procedure or separately in each case. An agreement can help in defining the roles by designating contact points and their functions (e.g. mailbox, executive function, initiating function, use of a joint body). An agreement should also take note of other stakeholders such as the developer, International Financing Institutions (IFI) and Non-Governmental Organisations (NGO).

### **(ii) Management**

15. The Convention requires Parties to take all appropriate and effective measures to prevent, reduce and control significant adverse environmental impacts from proposed activities. The environmental impact assessment process is carried out to achieve this. Successful management of the process and the related formal procedures depend on smooth practical application of the provisions of the Convention and on a reciprocal understanding of differences and similarities in the assessment procedures across the border.

16. Lack of understanding of the differences in EIA legislation in the Parties involved makes the application of the Convention often cumbersome or, in the worst case, unsuccessful as there are many elements in the Convention that require close cooperation between the Parties. Open discussions at an early stage reduce misunderstandings and help in avoiding friction between the Parties. As a last resort the Convention includes a formal legal dispute resolution process.

17. Negotiations can be organised before the actual start of transboundary EIAs on an ad hoc basis or by forming a permanent working group that discusses the practical matters of

ongoing and upcoming applications of the Convention. The following issues could be discussed:

- institutional arrangements;
- time schedules;
- translations; and
- cost sharing and other financial matters.

18. At a national level, permanent rules of procedure that specify as clearly as possible the different tasks and the responsibilities of all actors involved have been found useful. If no clear plans for the implementation of the Convention have been set in national primary or secondary legislation, the practical application of the Convention can be perceived to be complicated. This is due to the fact that it includes many steps and stakeholders.

19. Rules of procedure provide a basis for the process in each individual case. The level of detail and the degree of formalism in the rules of procedure may vary depending on the administrative culture. When a new application procedure is forthcoming, a plan for carrying out the application needs to be tailored according to the rules of procedure but taking into account the special circumstances of the case in question. It is advisable to go through all the stages of the application procedure and examine their practical implementation for each case in advance (see paragraph 21 below).

20. Parties with one or several agreements with varying combination of Parties build the national rules of procedure in consistency with the contents of the different agreements.

### **(iii) The procedure**

21. The procedure has distinct stages, each of which needs to be carried out in a way that serves the case in question, fits into the procedures and the culture of the Parties concerned and fulfils the requirements of the Convention. These stages include notifying the affected Parties, organising participation and information flow and providing EIA documentation and final results. In case the affected party decides not to participate in applying the Convention in the notified case, the process is stopped and it is up to the Party of origin to decide whether it carries out an EIA or not. An overall plan is needed for the entire procedure. Each step requires careful preparation before being carried out. National legislation plays an important role when applying the Convention. On the other hand, it may lead to rearrangement of the phases, e.g. the notification and transmission of EIA documentation.

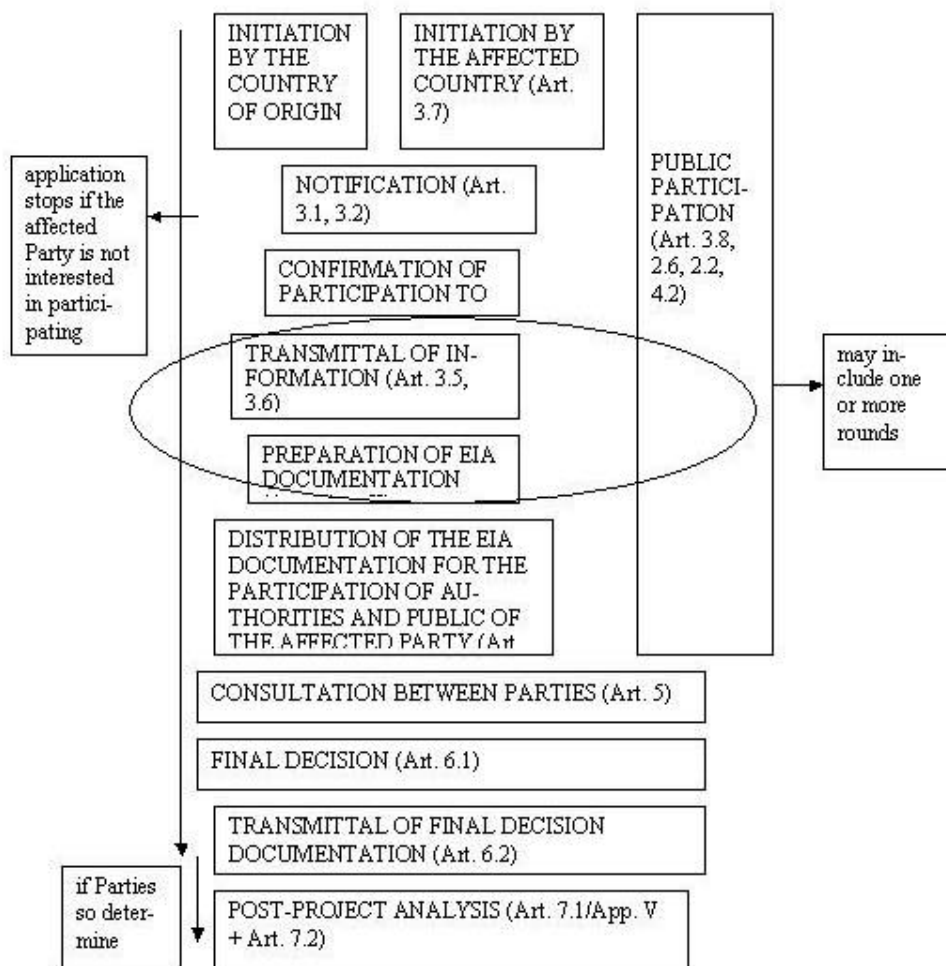
### **(iv) Initiating the process**

22. According to the Convention, the practical application starts with a notification. In practice, there are tasks to be carried out before sending out the notification. This chapter gives an overview of the tasks involved in the initiation of the process and suggestions for how they can be carried out.

23. The legal or natural person who raises the question of applying the Convention in a Party may vary from case to case. It is important that the Convention is well known in those Parties that are Parties to the Convention. Authorities within different sectors and at all levels of administration in particular, but also NGOs, IFIs, developers and the public, should receive information on the Convention and its contents through various means such as environmental committees. In this way one can ensure that knowledge of potential cases reaches the

competent authorities and Points of Contact, which can officially initiate the procedure.

**The flow-chart of the stages of an assessment according to the Convention**



### Screening

24. In the Convention, Appendix I includes a list of activities that automatically require an application of the Convention if significant impacts may extend across the border. The first task is thus to determine whether an activity may have significant impacts across borders. This exercise is often called screening. Some Parties may find that the list of activities in the Convention does not cover all relevant activities. An agreement could thus include further activities, which always require transboundary EIAs. Appendix III contains general criteria to assist in the determination of the environmental significance of activities not listed in Appendix I.

25. Furthermore, there may be other types of activities that in the special circumstances of the border area are likely to cause significant transboundary impacts. Such activities can be locally identified in advance to ensure smooth initiation of transboundary assessments. Special issues may also arise in the connection with the assessment of policies, plans and programmes and in issues related to long-range transport of pollutants. The concerned Parties should discuss the need to apply the Convention also in these cases (Article 2.5).

26. In most cases the Convention will be applied between neighbouring Parties. However it should be noted that the Convention does not only apply to transboundary impacts between neighbouring Parties but also to long-range transboundary impacts. Activities that can make long-range impacts in transboundary context include activities with air pollutants or water pollutants, activities potentially affecting migrating species and activities with linkages to climate change.

27. The legislation varies between Parties with respect to the criteria for initiating environmental assessments at the national level. This may confuse decision-making concerning the applicability of the Convention. International, national and regional environmental programmes may provide useful criteria to be used as a basis for finding thresholds and other criteria. In the ECE Environmental Series number 6, the chapter called "Specific methodological issues of Environmental Impact Assessment in a transboundary Context" (<http://www.unece.org/env/eia>) contains information on the determination of "significance". An agreement can define criteria such as large and major and thus provide mutually agreed threshold values.

28. It may be advisable to notify neighbouring Parties also of activities that appear to have a low likelihood of significant transboundary impacts. It is better to inform potentially affected Parties and let them decide on their participation instead of taking the risk of ending up in an embarrassing situation in which other Parties demand information on activities that have already progressed past the EIA phase. There are several cases where the affected Party has wished only to be kept informed.

29. In cases where an affected Party feels that it is likely that the Convention should be applied although it has not received a notification, the affected Party may initiate discussions on the issue of significance with the Party of origin (Article 3.7). Sometimes, the public in the affected Party raises the issue of negative impacts from another Party's activity and demands the Parties to start exchanging information according to the Convention (Article 3.7). The public can submit these requests to the competent authorities in the affected Party, either directly, or through authorities at local, regional or national level. Clear rules on screening will help in dealing with this kind of situations and in resolving any disputes that may arise.

### Institutional arrangements

30. The Convention specifies the formal steps and Points of Contact, but has no provisions on the informal contacts and negotiations that occur in many border areas between authorities at different levels. Formal contacts and negotiations must be carried out to meet the legal requirements of the Convention. It is nevertheless worth contacting the Point of Contact well in advance to give the Party time to get organised. It may also be useful to designate a "contact point" at the regional or even local level.

31. It is important to trigger informal negotiations throughout the process and especially at the start. Such negotiations should be conducted between:

- Points of Contact, developer and responsible authorities within the Party of origin;
- responsible authorities in border regions within and between Parties;
- the developer, authorities and IFIs; and
- the developer, authorities and NGOs.

32. The IFIs play a major role in EIAs in many Parties of the Convention. The IFIs are not, however, Parties of the Convention and are thus not able to apply formally the Convention although practically all IFIs have internal rules for EIAs. It is therefore advisable to clarify the relationships between the IFI and the actual Parties to the Convention. In this way the internal rules of the IFI for EIAs can be matched with the legal requirements of the Parties as well as the Convention.

#### Financial aspects

33. The application of the Convention has several financial implications. The “polluter pays” principle has been interpreted to mean that e.g. translation costs of the various EIA documents should be covered by the Party of origin, respectively by the developer. Furthermore there are some procedural steps with clear financial implications (publication in the affected Party, presentation of the documentation for public inspection, public hearings etc.).

34. It is necessary to go through the financial arrangements in an early phase. When all actors are informed early of their future responsibilities they are able to reserve finances and to link the matter with other processes. Agreements may specify financial aspects such as:

- costs of special transboundary studies;
- costs of translations; and
- costs of public hearings and other participatory procedures in the affected Party.

35. The costs can be covered by

- the developer;
- the affected Party;
- the Party of origin;
- an IFI;

or by a combination of two or more of the above mentioned bodies.

36. In some cases e.g. NGOs may provide contributions in kind by translating additional documentation of specific interest to the organisation, for example wildlife inventories.

#### Time schedule

37. It is in the interest of everyone involved in a transboundary EIA that time schedules are specified as clearly as possible. The authorities involved can prevent or minimize possible delays by planning the time schedule at an early stage. Opportunities to combine steps of the EIA procedure can be explored to increase efficiency. For example, the provision of extra information after a confirmation of the participation by the affected Party may be unnecessary if the notification already contains the complete information.

38. The timing of the application procedure process should be set at the initiation phase so that the entire process is given a clear structure with a start and an end. Then all Parties are aware of the time sequencing involved. The timing should be discussed with everyone concerned in an early phase. Parties may have strict rules on time schedules for public participation and these may cause difficulties in linking the transboundary EIA to the national EIA. IFIs may also have their own rules concerning timing. By identifying the different



requirements at an early stage it may be possible to develop a smooth process that avoids delays and/or rushes that may be intimidating for those participating in the transboundary EIA.

39. Clear rules on the timing are as important as the actual allocation of time for each step. Timing is important especially:

- in sending the formal notification;
- in responding to the notification;
- in public consultation and participation; and
- in informing of the final decision.

**(v) The notification (Articles 2.4, 3.1 and 3.2)**

40. Notification is the formal and mandatory start of the application procedure. Informal contacts may have preceded the notification. The notification may be passed between the official Points of Contacts or by other authorities, which are responsible for this step according to national legislation or through agreements. To avoid misunderstandings, the notification or a copy of it should be sent to the Point of Contact, which will then pass the notification to the actually responsible authority. The pre-notification (informal) contacts are highly recommendable to give both Parties time to get prepared for the coming procedure. The importance of the official notification lies in the formality it gives to the procedure. The format for notification can be found in the Convention's website (<http://www.unece.org/env/eia>).

**Timing the notification**

41. The notification must be sent the latest when the public in the Party of origin is being informed of the national EIA process. It is recommendable to send the notification as early as possible, favourably before the scoping, if such a phase is being carried out (see paragraphs 37 to 39 above). All Parties that have been identified to be potentially affected should receive a notification. In the case of joint transboundary EIAs, i.e. when two Parties to the Convention are simultaneously affected Parties and Parties of origin, e.g. in connection with transboundary-transport routes, reciprocal formal notifications help to clarify the roles of both Parties.

42. In agreements, the moment of notification should be specified. The precise time of the notification depends on whether the EIA procedure of the Party of origin includes: (a) a formal stage with mandatory public participation for the identification of issues to be studied; (b) a formal identification stage without participation; or (c) no such formal stage at all. The formal stage for the identification of issues to be examined in the EIA, often called scoping, provides a suitable moment for an early notification.

**Contents of notification (Article 3.2)**

43. The contents of the notification are specified in Article 3.2. In addition, the UN/ECE working group has provided a format of notification (Report of the first meeting of the Parties, <http://www.unece.org/env/eia>). It is recommended to add "other" information (Article 3.5) already to the notification. This speeds up the process since it removes one round of information exchange. The additional information on the activity and its likely impacts also helps the affected Party to consider whether it wants to be part of the EIA or not.

Responding to the notification and confirmation of participation (Article 3.3)

44. Parties should always respond to notifications within the time specified by the Party of origin. A negative response to the Party of origin is also important. The Party of origin can then proceed in planning the national EIA process. While responding to the notification and confirmation of participation, the time of carrying out environmental impact assessment specified in national legislation of the Parties should be taken into account.

**(vi) Transmitting information (Articles 3.4 to 3.7)**

45. If a potentially affected Party decides not to participate and indicates this in its reply to the notification, the application procedure ends. On the other hand, if the affected Party wants either to be informed or to participate, the application procedure continues with further exchange of information.

46. If other information has not been provided to the affected Party already in the notification, it must be sent as soon as the affected Party has expressed its interest in participating in the process. The exchange of information then continues between the Parties throughout the process. The time limits given by the responsible body should be followed. The time limits should preferably be agreed upon in advance so that the time limits are both legally acceptable and realistic (see paragraphs 37 to 39 above).

Selection of material

47. The documentation has to include all relevant items mentioned in Appendix II of the Convention. The identification of alternatives is usually felt to be the most difficult part in preparing the documentation but also among the most important ones. The alternatives set the scene for the entire assessment and thus they should be identified at an early stage.

Submitters and receivers of information

48. The Convention provides (Article 3.8 and 4.2) that both concerned Parties shall ensure that the public of the affected Party is informed and be provided with possibilities of making comments. Comments of the public to the EIA documentation may be sent by the public either to the competent authority or, where appropriate, through the Party of origin. The Convention does not contain more specific information on the authority to be addressed.

49. The Parties should know from the very beginning, at the latest at the time of notification, which the concerned authorities are that exchange information. The roles may vary depending on the type of information exchange:

- sending documents (e.g. notification);
- providing information to the public; and
- sending comments of the public.

50. It should be clear how the information from the public is transferred to the Party of Origin. It should be clarified who is responsible for informing the public of the affected Party and the way that comments of the public shall be transferred.

51. Documents like the notification and the EIA documentation will always be passed between the authorities of the respective Parties. For the provision of information to the public and the transmission of comments of the public there are various options:

- the responsibility is with an authority of the affected Party (Point of Contact or other authority); it is possible that the public of the affected Party sends comments either directly to the competent authority of the Party of origin or through the Point of Contact or competent authority in the affected Party;
- the responsibility for informing the public of the affected Party is with the authority in the Party of origin (competent authority) or the proponent (developer); the public of the affected Party sends comments directly to the competent authority of the Party of origin; or even directly to the proponent and sends copies of the comments to the competent authority of the affected Party; or
- there is a shared responsibility between authorities in both Parties.

52. The advantage of the first option is that the authority of the affected Party is usually well informed of the ways and means of publishing and making available the EIA documents for public inspection. A drawback, depending on the specific arrangements, could be the timing, especially when the comments of the public are first sent to the authority in the affected Party. The advantage of the second option is that the information can be provided directly to the public and that the comments can be sent directly to the Party of origin. This will enhance the timing of the process. A disadvantage may be that the authority of the Party of origin is not familiar with the local ways of publishing and practice regarding making available documents for public inspection. The advantages of both alternatives could be combined by the third option: sharing the responsibility between the authorities or both Parties but that needs a further specification and division of tasks.

53. Agreements give a forum for defining the roles and responsibilities in information flow.

#### Public participation (Articles 2.2, 2.6, 3.8 and 4.2)

54. The Convention requires that the public of the affected Party be given the opportunity to participate in the environmental impact assessment process. Participation is specified in the Convention as a right to be informed and a right to express views. Thus the practical application of the Convention should include these aspects. One of the main challenges of public participation arises from the fact that the legislation and practice concerning public participation vary between Parties. Therefore, participation methods need to be tailored to fit the practices of the affected Party.

55. Apart from the broad public, bodies worth consulting include different authorities, specialists, IFIs and NGOs on both sides of the border. To pass information in correct form, in relevant scope and in the most appropriate language, the stakeholders and the target groups need to be clearly defined. Many stakeholders may hold information and may positively take part in gathering information. The competent authority should, however, ensure that the information is non-biased and of adequate quality (see also paragraphs 33 to 35 above).

56. Public participation is considered very important in the application of the Convention and thus there is guidance specifically meant for planning the participatory process. This guidance is being developed and will be available on the website of the Convention (<http://www.unece.org/env/eia>). Detailed arrangements on informing the public on the involvement in the transboundary process may be included in an agreement. An agreement could make clear what the roles and responsibilities are in informing the public and in transferring the comments of the public to the competent authority of the Party of origin.

57. The UNECE Convention on access to information, public participation and access to justice in environmental matters (the Aarhus Convention, 1998) sets the basic requirements on public participation (<http://www.unece.org/env/pp>).

#### Translation of documents

58. A special feature of the practical application of the Convention is the many languages of the concerned Parties. Studies have shown that even minor difficulties in understanding the language may retard participation of the public and the authorities. This is the case with closely related languages such as the Scandinavian, German-based and Slavic languages.

59. Although the Convention does not specify issues of language, it is important that information is provided in a language understood by those participating. The Parties are recommended to plan and decide upon responsibilities concerning translations in the initiation phase. The target group needs to be well defined before planning the translations is taking place.

60. It is necessary to decide:

- which parts of the documents are planned to be submitted to:
  - o the affected Party,
  - o the regional/local level in the affected Party, and
  - o the public in the affected Party;
- what language requirements are set by the chosen target groups;
- which documents will be translated into which language;
- in which language the responses can be given;
- who is responsible for the translations and the quality both in given and received information; and
- who covers the costs of translations both in given and received information.

61. Translating into English or Russian instead of the language of the affected Party is sometimes done when there is an IFI involved or when the assessment deals with more than two Parties. It is important that at least parts of the documents are translated to the language of the affected Party.

62. Needs for translations are determined according to the language differences between the Parties. These matters can be generally specified in an agreement between Parties: which documents should be translated, who is responsible for the translations, for their quality and for their costs. Agreements can also set requirements on time allocated to translations and the timing of translations. In agreements Parties can also state who is responsible for the interpretation at hearings.

#### **(vii) Screening the likelihood of significant adverse transboundary impacts by the affected Party (Article 3.7)**

63. The Party of origin should have carried out the screening of the potential adverse impacts of the planned activity in the initiation phase. Even if the Party of origin comes to the conclusion that the Convention does not have to be applied, the affected Party may have another view and thus initiate discussions with the Party of origin. If no common view is

reached, any of the Parties may ask an inquiry commission in accordance with the provisions of Appendix IV to give advice. One way to avoid situations of this kind is to open unofficial discussions with the affected Party already in the initiation stage or to just notify the affected Party.

**(viii) Preparation of the EIA documentation (Articles 4.1 and 4.2)**

64. Once the developer has compiled all the material in the environmental impact assessment nationally and in the affected Parties, he or she produces documentation. When the assessment is based on an application of the Convention, the documentation shall cover, as a minimum, the items that are listed in the Appendix II of the Convention.

65. The documentation has to be provided to the affected Party. In practice the documentation may be sent to the Point of Contact of the affected Party or to another authority of the affected Party, which is responsible for this step according to national legislation or if both Parties so agreed in general (e.g. in an agreement) or for the specific case. In both cases the delivery may be carried out through a joint body, where one exists and where this is appropriate.

66. The document shall be provided to the public for comments, which are collected later. According to the Convention, both Parties are jointly responsible for the distribution and collection of comments. It is necessary to decide which Party shall perform this task and which way. The paragraphs on transmitting information suggest how to arrange the information flow. It is important to decide these issues in the initiation phase or at the latest immediately after the notification. It is also highly important to provide time limits for the submission of the documentation and especially for the public to respond. The time limits should be realistic both from the participants' and from the authorities' point of view.

**(ix) Consultations (Article 5)**

67. After completing the documentation, the Party of origin has to initiate without delay consultations with the affected Party. Matters to be decided upon when planning the consultation process include:

- which authorities and bodies can and should participate in consultations;
- how and when consultations are carried out; and
- how the Parties are informed of the consultations outcomes and their use.

68. Due to the sensitivity of different cultures to issues such as participation and time-frames, agreements could include provisions on the consultations.

**Timing**

69. A reasonable time- frame for the duration of the consultations has to be set (see also paragraphs 37 to 39 above). One way is to agree on a case-by-case basis on the time-frame within which the consultations has to be finished. The consultations should always be conducted before the final decision is made so that their outcome can affect the decisions and the conditions it may specify for the activity.

### Issues

70. Article 5 suggests issues to be discussed in consultations, e.g. possible alternatives to the proposed activity, other forms of possible mutual assistance in reducing any significant adverse transboundary impact of the proposed activity and any other appropriate matters relating to the proposed activity. Another important item worth to negotiate is monitoring during the construction phase. It seems likely that Parties propose in consultations additional items (e.g. specific mitigation measures, monitoring and post-project analysis).

### Roles of different stakeholders in consultations

71. The Convention does not unambiguously specify who should participate in consultations. Official consultations should, however, take place at sufficiently high level because they represent negotiations between national states. The Parties may wish to include other bodies in the consultations. It may be essential to meet more often and to start with an exchange of information at an expert level (e.g. experts of sector authorities). In order to ensure that consultations will focus on the most important items, the presence of experts has been found useful. Consultations may also be done in writing (see also paragraphs 37 to 39 above).

### Means to be used in consultations

72. In consultations it is useful to use many different means in order to ensure efficient information flow in different consultation phases, taking into account cultural differences in communication and negotiation. The different forms include:

- A joint body;
- Meetings of experts;
- Electronic meetings/exchange of emails or official letters;
- Meetings of medium and high-level officials (see also paragraph 71 above).

### **(x) Final decision (Article 6.1)**

73. The Party of origin has to provide the final decision with the reasons and considerations to the affected Party. These should also reflect the impact on the affected Party.

74. Trust may be raised by clearly specifying how comments of the authorities and the public of the affected Party and the outcome of the consultations will be dealt with. However, this does not mean that the Party of origin has to strictly follow the proposals or requests of the affected Party in detail, but it will have to take them into due account and to balance them against other items according to existing legislation. The basic premise is that comments are treated equally, irrespective of national boundaries. If it is unclear how the comments of the authorities and the public of the affected Party are considered, future motivation to participate is affected negatively and distrust may arise. If individuals in the affected Party have the right to appeal against the decision in the Party of origin, the information about such a right of appeal should be given in the decision or in an annex to it (see also paragraphs 54 to 57 above).

### Consultations on the basis of additional information after the decision

75. In case additional information relevant to the decision is obtained after the final decision but before the activity is started, the Party of origin should deliver this information to the concerned Parties. If one of them so requires, additional negotiations have to be carried out on the revision needs of the decision e.g. monitoring, additional conditions or mitigation measures etc.

### Responsibilities

76. The Point of Contact or other authorities, responsible according to the legislation of the Party of origin or to an agreement, may send the final decision to the affected Party. For the way by which the authorities and the public of the affected Party are informed and provided with the final decision, see paragraphs 48 to 53 above.

77. In an agreement roles in dissemination of the decision could be dealt with in detail.

## **III. SPECIFIC ISSUES**

### **(i) Dispute prevention and settlement (Article 15)**

78. The Convention includes a framework and procedure for dispute resolution. The first requirement is to have negotiations between the concerned Parties. This article refers to negotiations after the dispute has arisen. Information exchange and negotiations before the application of the Convention reduce the likelihood of a dispute in a first place and are thus worth carrying out. Dispute resolution mechanisms can also be included in agreements based on the Convention.

### **(ii) Long-range impacts (Article 1.8)**

79. The definition of transboundary impact used in the Convention includes long-range impacts, which means that it is mandatory to examine the likelihood of long-range impacts, as well.

### The activities and the impacts

80. Identifying types of activities that may have long-range impacts is the first step. The main difficulty lies in deciding when a specific activity contributes significantly to a long-range impact. For example, industrial pollutants travelling long distances may cause long-range impacts, but the contribution of a single activity is often very small. On the other hand, an activity that causes impacts on migrating animals, have transboundary long-range implications. Agreements may list specific activities to be screened for long-range impacts.

### The area

81. When the activities have been identified, the possible affected Parties for the impacts of these activities should be found. The difficulties relate to deciding on 'realistic' areas of impact in order to determine which Parties of the Convention may be affected and thus informed of the activity. Thinking of areas or regions as geographical entities such as river basins, watersheds, mountain regions and waterways, and identifying the mechanisms through which impacts may occur, helps in dealing with the scale of impacts. A crucial issue will be the magnitude of the impact due to the activity relative to other 'background' effects caused by other activities.

### Dealing with the complexity

82. When long-range impacts are in question, the setting is far more complicated than in a two-Party transboundary assessment. For example, there may be several affected Parties with different languages. To keep translations at a realistic level it is advisable to use, as appropriate, one or several of the three official UN languages in the notification (see also paragraphs 58 to 62 above). Problems may also arise when legislative requirements of various Parties have to be considered. Database on EIA in a transboundary context, EnImpAs (<http://www.unece.org/env/eia>) including information from legislation in different nations would support the practical application. Each Party could contribute to this data source by providing regularly updated information on their legislation into the web, in one or several of the official UN languages.

#### **(iii) Joint EIA (Article 2.1 and Appendix VI, item (g))**

83. A joint EIA is a special case in applying the Convention. In practice two situations may occur:

- joint projects with impacts on one or both of the two Parties of origin (e.g. boundary-crossing motorway), and
- joint projects with impacts not only on the two Parties of origin but also on other Parties (e.g. pipelines in a water basin)

84. In the first case, the Parties should agree when starting the projects, whether they are going to carry out two separate EIAs, (i.e. two different procedures including the elaboration of two different EIA documentations and notify each other), or whether some or most of the steps will be carried out jointly. The ways in which the steps of the EIA procedure may be joined, and in which the tasks may be distributed between the two Parties, are manifold. In the second case, Parties will also have to cope with the problem of how the participation of these other affected Parties may be carried out. From the practical point of view, it may be helpful to share the responsibilities among the Parties, but the obligation to carry out the process rests separately on those Parties that count themselves as Party of origin. To make the joint EIA smooth, the roles of the two Parties should be specified from the beginning for each stage of the assessment. Parties which are expected to have joint transboundary assessments on a regular basis, for example because they are geographically located in such a way that resources or pathways overlap borders, can resolve many issues by developing bilateral agreements on transboundary EIA.

### Getting started

85. A joint EIA can be initiated by holding a preparatory meeting between the two (or several) joint Parties of origin to prepare the notification and the procedure. At this meeting the practical issues such as time schedules, level of participation and steps to be taken should be decided upon. It is worth specifying separate time schedules for each Party to respect the national legislation. However, informing the other Parties help to build a flexible time schedule that suits all the Parties and is known by all of them. One way to solve the practical issues is to form a joint body. The body could meet regularly throughout the process and have a general coordination role with respect to the schedules and other practical matters related to the process management. Meetings may be held face to face or by using electronic devices such as email and AV-equipment.



### Notification

86. Notification should be sent to all the affected Parties. At this stage, the notification may be exchanged because of the dual roles: Party of origin and affected Party. In addition there may be third Parties involved, which are only affected by the activity. The reasons for cross-notification are: (1) to fulfil the requirements of the Convention; (2) to keep the process well defined; and (3) to keep it connected to the national EIA process. The documents may be partly the same and they should include cross-references so that the receiver knows that the different notifications deal with the same case.

### The assessment

87. When the Parties interested in participating in the joint EIA have been identified it is rational to carry out screening, scoping, the documentation and possibly other steps jointly, although there may be special features of the impacts on one side of the border that warrant partly separate analyses. Joint bodies are likely to be useful in ensuring e.g. coherent documentation. If the Parties give very different weights to the impacts, a joint assessment is more difficult to carry out and is likely to require extensive negotiations throughout the assessment. In these cases a joint body consisting of EIA authorities with general supervisory function is highly recommendable.

### After the assessment

88. All the Parties of origin will make the decisions on the activities separately. This is due to the national legislation and it is also supported by the requirements of the Convention. On the other hand, monitoring that extends over more than one Party's territory is useful to carry out jointly, for example by forming a joint task force or by using some bi- or multilateral body for dealing with the case specific monitoring.

## **(iv) Policies, plans and programmes (Article 2.7)**

89. The Convention requires that the Parties endeavour to apply the Convention to level of policies, plans and programmes. Thus, it is not mandatory as such. There is still a lack of tradition and experience. However, the recent EC Directive on SEA 2001 (Directive 2001/42/EC of the European parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment) (<http://europa.eu.int/comm/environment/eia/sea-legalcontext.htm>) sets requirements for Member States of the European Union to carry out transboundary assessments also for plans and programmes. This requirement will cover also UNECE countries in the future because a Protocol on Strategic Environmental Assessment under Espoo Convention was finalized in January 2003.

90. The level of policies, plans and programmes has been considered important in the context of the Convention and thus an ad hoc working group has been set up to develop a protocol on strategic environmental assessment under the auspices of the Convention. If the assessment of PPPs is included in a bi- or multilateral agreement it is essential to agree on the type of PPPs that are made subject to transboundary assessments on a reciprocal basis. For example transport is one sector that is advisable to be included in the list.

#### **(v) Post-project analysis (Article 7)**

91. Post project analysis is not a mandatory activity that would be included in all transboundary EIAs. Still, the Convention provides that the Parties shall determine at the request of one of the Parties whether a post-project analysis shall be carried out. In practice both concerned Parties may have different views whether such an analysis is necessary. As a result of consultations on such an issue a post-project analysis may or may not be carried out.

92. If a post project analysis is carried out as an application of the Convention, it has to analyse, as a minimum, both the activity as well as its potential adverse transboundary impacts. If the post project analysis provides unexpected results, the Party of origin has to inform the affected Party and carry out consultations concerning necessary measures.

93. A post project analysis can be included in the final decision as a requirement related to the monitoring of the activity. Alternatively, it could be made part of the overall plan for the transboundary assessments from the start of the procedure. A post project analysis is typically based on the monitoring of the activity and its impacts. Monitoring can also be carried out jointly by the Parties and within the territory of all Parties concerned. The Parties should exchange any results gained of the monitoring. Requirements concerning post project analysis can be included in agreements on transboundary EIA.

#### **IV. TRANSPOSITION INTO NATIONAL LEGISLATION (Article 2.2)**

94. A ratification of the Convention is based on a transposition of the requirements of the Convention into national legislation. This can be achieved by including the necessary transboundary considerations into the national EIA legislation, wherever such legislation exists. The requirements of the Convention may also be included in different pieces of legislation, e.g. those covering environmental protection or physical planning.

95. The transposition of the requirements of the Convention ensures that national authorities organise the practical application of the Convention. The requirements of the Convention can be further strengthened and clarified by specifying in primary or secondary legislation issues such as the responsibilities of different authorities and the rules of procedures of joint bodies. The national legislation may thus help the other Parties to understand the relationship of a Party to the requirements of the Convention and helps in identifying links between the EIA procedures of the Parties.

#### **V. CREATING BI- AND MULTILATERAL AGREEMENTS AND ARRANGEMENTS (Articles 2.2 and 8 and Appendix VI)**

96. As noted throughout this guide there are many issues that can be agreed upon in advance by Parties which expect to have transboundary assessments on a regular basis. The Convention provides a legal basis for agreements (Articles 2.2 and 8). Annex VI to the Convention contains elements for such agreements. These agreements are not a precondition for the application or ratification of the Convention but should be seen as a way of achieving effective application.

97. The study on bilateral agreements (“Bilateral and Multilateral co-operation in the framework of the Convention” (<http://www.unece.org/env/eia>) has shown that there are different types of agreements. First there are general agreements, which contain a statement or declaration of intent to apply the Convention. Those agreements are prepared on national government level. The text of those agreements mainly refers to the text of the Convention.

Practical details will have to be dealt with in a different way, for example by creating a joint body or joint Commission.

98. Another type of agreement is a more specific agreement. Those agreements contain detailed practical guidance or recommendations for the application of the Convention in practice. National government levels as well as regional level authorities are involved in preparing those agreements. Some Parties have signed bilateral agreement on how to carry out EIAs in a transboundary context between them. More agreements of this kind are on the way and there are many draft agreements under negotiations. The Convention refers to these agreements as well as to multilateral agreements (Article 2.9).

99. In addition, there are several other agreements that support the application of the transboundary assessments. These include general environmental agreements between two or more Parties. The challenge in developing successful agreements is to take into account the national legislative requirements on time schedule, on steps and on the order of the steps from both Parties in a way that satisfies both Parties.

100. A tentative list of the general contents of a bi- or multilateral agreement is as follows:

- area of application of the Convention;
- criteria for deciding what is a significant impact;
- naming people or organizations to act as contact points;
- setting up a joint body;
- notifying those who need to know;
- providing information and publicity;
- public participation (public hearings, information meetings, ensuring comments are passed on);
- consultation between the concerned parties;
- reaching a decision;
- post project analysis;
- preventing disputes or settling them;
- arranging translations; and
- deciding who pays.

**Annex V**

**DECISION III/5  
STRENGTHENING SUBREGIONAL COOPERATION**

**The Meeting,**

**Recalling** its decision II/8 on strengthening subregional cooperation,

**Having considered** the outcome of the workshops on: the implementation of transboundary environmental impact assessment (EIA) in the Balkan and Black Sea regions; the application of the Convention in Central and Eastern Europe; subregional cooperation in South-Eastern Europe; and model bilateral and multilateral agreements for South-Eastern Europe,

**Recognizing** that subregional cooperation promotes the regular exchange of information within the subregion and improves the practical application of the Convention,

**Recognizing also** that bilateral and multilateral agreements facilitate the effective implementation of the Convention,

**Wishing to** encourage the development of bilateral and multilateral agreements through subregional cooperation under the Convention,

1. **Endorses** the Guidance on subregional cooperation as appended to this decision;
2. **Decides** that activities on subregional cooperation aimed in particular at capacity building for the countries in Eastern Europe, the Caucasus and Central Asia will be included in the work plan;
3. **Invites** Parties and non-Parties to host workshops or take other appropriate measures to promote cooperation in their subregions;
4. **Also invites** Parties to nominate lead countries on subregional cooperation where appropriate and further invites these lead countries to consider ways to coordinate their activities;
5. **Suggests** that Parties should provide information to the Working Group on Environmental Impact Assessment on activities to which the guidance has been applied.

## **Appendix**

### **GUIDANCE ON SUBREGIONAL COOPERATION**

#### **Introduction**

1. At their second meeting, held in Sofia from 26 to 27 February 2001, the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) adopted decision II/8 on strengthening subregional cooperation. Croatia and Poland were the lead countries for this task.
2. The objective of this decision was to accelerate the ratification and practical application of the Convention as well as the development of bilateral and multilateral agreements through strengthening subregional cooperation. One of the measures considered was to produce a guidance document that would, on the one hand, summarize the experience gained so far and, on the other, provide recommendations for further action.
3. Subregional cooperation is not a new task in the work plan, separate from bilateral and multilateral cooperation or the practical application of the Convention. On the contrary, all work and documents produced in the past should be taken into account. In this respect the reports on Guidance on the Practical Application of the Espoo Convention (appended to decision III/4), Bilateral and Multilateral Cooperation in the Framework of the Espoo Convention (ECE/MP.EIA/4, annex I) and Current Policies, Strategies and Aspects of Environmental Impact Assessment in a Transboundary Context (ECE/CEP/9) were considered to avoid overlapping and repetition.
4. The present guidance document is based on the results of three workshops: on the implementation of transboundary environmental impact assessment (EIA) in the Balkan and Black Sea regions (April 2002, Sandanski, Bulgaria); on the application of the Espoo Convention in Central and Eastern Europe (June 2003, Szentendre, Hungary); and on transboundary EIA in South-Eastern Europe (November 2003, Belgrade). Practical experience in international cooperation, the results of day-to-day contacts with the representatives of neighbouring countries, unofficial meetings and practical cases were kept in mind during the preparation of this guidance.
5. Subregional cooperation is a vital element of the implementation of the Espoo Convention. Moreover, the sharing of views, practical experience and information about procedures plays an important role in improving national EIA practice.
6. While this document was prepared primarily for the purpose of implementing the obligations of the Parties to the Espoo Convention, it is worth noting that the requirement to carry out a transboundary EIA is also included in the amended text of the European Union's EIA directive, in accordance with directive 97/11/EC.
7. It should be noted that, while this document strives to present the experience gained so far, it is not intended as a general guideline, but as a working document to summarize work done so far and suggest areas that need further action. Subregional cooperation should remain a flexible tool, following the needs identified. The purpose of this work is to facilitate future choices of topics, avoid overlapping with work already done and suggest topics that may be investigated to help improve the implementation of the Convention.

## **I. REQUIREMENTS UNDER THE CONVENTION (OBLIGATIONS)**

8. The Convention requires a number of procedural steps to be followed, as described in its Articles 3, 4, 5, 6 and 7 and illustrated in the flow chart in document ECE/CEP/9.

9. Each of the stages should be prepared beforehand and a plan of the entire procedure set out in advance to safeguard the final results. National legislation plays an important role, but details of the phases of the procedure may be required in order to streamline the transboundary procedure. Such details may take the form of detailed policy documents or be arranged, well in advance, case by case. Detailed issues to be taken into account have been described in documents ECE/CEP/9 and Guidance on the Practical Application of the Espoo Convention.

10. The process of transboundary EIA may be initiated by either of the Parties concerned, that is, the Party of origin, which is the country where the development is to take place, or the affected Party, which is the country where the construction and operation of the development may have an impact.

11. Notification is usually considered as the first step to initiate the application of the Convention. However, a number of formal or informal procedures may be undertaken by one or both sides to the process to prepare such a step, for instance (though not necessarily in this order):

(a) Screening: decision on whether or not a given development is to go through the transboundary EIA procedure. This step has to be taken in order to decide that contact with the other Party is required. In most cases the list of activities as included in the Convention or a bilateral agreement is used. The definitions of some activities in Appendix I to the Convention could be made more precise based on practical experience through bilateral or multilateral agreements. The definition of “significance”, decisive to the issue of applying the Convention, has been matter of concern. Guidance on the term “significant” can be found in document ECE/CEP/9 or can be given by national law or contained in a bilateral agreement. Good cooperation between the countries and an early exchange of information about potential projects are crucial in this respect;

(b) Initial notification and confirmation of participation: at this stage a minimum of institutional arrangements is necessary to make the process run smoothly, in particular where the countries involved delegate responsibility to authorities of different levels. Information regarding the designation of the authorities that should take part in these communications, the detailed arrangements for translations and the time frames should be exchanged between the Parties. The stage at which this information exchange may occur is also important and, while all Parties agree that it should take place as early as possible, often the authorities become aware of a proposed development only when the siting procedure, including national EIA, is initiated. It has to be taken into account that the initiation of a national procedures usually involves the initiation of an administrative procedure, which has to be completed within a certain period, often not allowing for the additional time required for a transboundary procedure (needed for the exchange of information, internal consultations within the affected country, translation, etc.);

(c) Transmittal of information concerning the potentially affected environment in the affected Party: this information should be made available at the request of the Party of origin, to be used in the preparation of an EIA. The procedural and timing issues mentioned above apply also in this case;

(d) Public participation: the Convention requires that the public of the affected Party should be given an opportunity equivalent to that given to the public of the Party of origin to take part in the procedure. An issue that needs further investigation is the possibility of appeal in a transboundary procedure. At present, for procedural reasons, appeals by foreign citizens and residents are very restricted. Where both the scope and the timing of the involvement of the public differs between the countries, the problem of reciprocity and equivalence needs particular attention in bilateral agreements;

(e) Preparation of the EIA documentation and its distribution: documentation prepared in a transboundary procedure must cover as a minimum the items listed in Appendix II to the Convention. The documentation has then to be distributed in accordance with the requirements of the national legislation and be provided for comments to the authorities and the public of the affected Party. The way in which translation of the documentation, its distribution and resulting information flow is arranged between the Parties concerned directly influences the effectiveness of the whole process;

(f) Consultation between Parties: in order to provide a smooth information flow given the differences in requirements and cultural traditions concerning decision-making and public participation, it is considered useful to agree beforehand on which authorities, organizations and agencies should participate in the consultations, who will be responsible for managing the consultation rounds and what will be the time frames;

(g) Decision and transmittal of final decision: the final decision is in each case taken by the authority of the Party of origin, which has an obligation to communicate this decision and its justification to the affected Party;

(h) Post-project analysis: in some national EIA systems post-project analysis is not mandatory and the Parties concerned may have different views on the need for it. Arrangements for a post-project analysis may be part of an overall plan for a transboundary procedure or may be decided only at the very end.

12. Given that different countries have different administrative procedures and EIA provisions, the steps set out in the Convention may be used to compare their national procedures, in order to clarify similarities and divergences.

13. The legal basis for bilateral or multilateral agreements and arrangements is set out in Article 8 of the Convention, which encourages Parties to use existing as well as set up new agreements in order to comply with their obligations under the Convention.

14. Elements of such agreements or arrangements are proposed in Appendix VI to the Convention. They include:

- Institutional, administrative and other arrangements in each of the States;
- Harmonization of policies and measures and standards of environmental protection;
- Methods of identification, measurement, prediction and assessment of impacts and of post-project analysis;
- Methods and programmes for the collection, analysis, storage and dissemination of comparable data regarding environmental quality;

- Establishment of threshold levels and specified criteria for defining significance of transboundary impacts;
- Joint assessment, monitoring programmes, intercalibration of monitoring devices and harmonization of methodologies;
- Procedural aspects such as: how to involve the public of the affected Party; submission of comments; public hearings and consultations between the Parties (participants, subjects); decision (how to reflect comments of the authorities and the public, publication, possibilities of appeal); post-project analysis; dispute prevention and settlement; joint EIA; translation; financial aspects.

15. The minimum information which should be prepared and communicated to other Parties for an effective application of the Convention includes (ECE/CEP/9):

- The authorities responsible for EIA;
- The authorities that will be involved at the various stages of the EIA process (with an indication of who does what);
- A flow chart describing the various stages and time frames of the national EIA process.

16. It is also considered useful to have:

(a) Regular meetings of experts (possibly as a joint expert group) to discuss the current status and envisaged changes in legislation and procedures; such a solution helps to set up a working relationship and facilitates future work under tight deadlines;

(b) Access to environmental information, including environmental standards, background pollution levels and the location of protected areas.

17. Timing remains a controversial factor: for while the Party of origin is bound by the timing of its administrative procedures and has to satisfy the right of the developer to receive an answer to its application in due time, the affected Party should have enough time to consult its authorities and allow for public participation. Timing of decision-making may also affect the right of the public of the affected Party to appeal.

18. Translation of the documents is also an important issue. In this case the criteria involved include costs, timing and quality. Although most of the documents are provided by the Party of origin for the information of the affected Party, the information flow is in both directions. It may also be worthwhile providing two streams of communication: such as direct communications between the authorities involved, which may use a commonly understood language, and communication with the public, which definitely has to be translated. Additional problems may arise in areas where important ethnic or language minorities use a language that is different from the official language of the country and the language used by the administration.



## II. DIVERSE PARTIES

19. Of the 55 UNECE member countries, 39 are Parties to the Espoo Convention (together with the European Community). The diversity of the region is reflected amongst the Parties (size, population size, population density). This diversity also applies to their administrative and legislative systems, the number and type of new developments planned and the practice of public participation – which are factors directly influencing EIA procedures.

20. It should be noted that countries that are not a Party may also use the Convention as a reference point for international agreements on transboundary EIA. Experience gained from such cases should also be reported, whenever possible, as it may enrich the practice of transboundary assessment.

21. In order to facilitate the exchange and cross-fertilization of ideas on practical experience and procedural solutions adopted in such a diverse region, countries may be grouped into more uniform subregions, with common traits. The subregions within UNECE may be delineated according to a number of criteria and no definite and stable division is possible. A possible but by no means exhaustive list of criteria for the creation of subregions would involve:

(a) Geography: countries located in the same geographical region, such as the Balkans, Scandinavia, etc., or neighbouring countries;

(b) History: countries with a common history that may influence the administrative system and procedural practice, or countries that have suffered the ravages of war or natural disaster (such as extensive floods) and will now face an intensive reconstruction period;

(c) Language: for either ethnic or historical reasons a number of countries in the region are able to communicate in a single language or use a language understood by the neighbouring country. This may facilitate the exchange of information, including direct access to legislation, manuals and procedural guidelines, and simplify public participation in transboundary EIA procedures;

(d) Economic development: this may relate to the general level of economic development or to a particular issue – for example, the construction of transboundary infrastructure such as a road, railway or pipeline, or a project serving more than one country (e.g. energy plant or airport). Note that a clear difference in the economic levels of two countries involved in a transboundary EIA procedure may influence the level of public participation if the cost of either travel or materials is much higher, in terms of purchasing power, in one of the countries;

(e) Politics: in many countries of the region changes in legislation and resulting changes in practice are driven by a common political force. This is true for countries members of the European Union and also for the accession countries, where very dynamic legislative changes have taken place during the past decade. For their neighbours the dynamics of the change are a challenge in the setting-up of a stable bilateral procedure concerning transboundary impacts. Political borders may also pose additional problems to public participation, in particular when visas are required;

(f) Administrative organization: the administrative competences of different bodies, such as the division of competences in federal States or the statutory consultees required to comment on an EIA or associated documents or licensing of experts to perform EIA, also influence transboundary procedures;

(g) Convention's status: although the Convention may well be applied by countries that are not Parties, it imposes certain obligations upon those that are Parties. A specific situation arises in the case of countries whose neighbours are willing to cooperate on a case-by-case basis but are not Parties to the Convention. Although not directly linked with the status of the Espoo Convention, but possibly influencing practice and procedure, is the status of other environmental conventions as well as other international obligations in the country and neighbouring States.

22. The list of criteria may be both extended and elaborated. However, even the criteria shown above demonstrate that the term "subregional" within the UNECE context may mean a number of possible combinations, by no means limited to geography.

23. The sharing of problems and solutions may within the country groups (or subregions) help to establish and implement good practice in transboundary EIA.

### **III. LESSONS LEARNED**

#### **A. Workshops**

##### **1. Workshop in Sandanski**

24. The workshop on the implementation of transboundary EIA in the Balkan and Black Sea regions was held on 11 April 2002 in Sandanski, as a follow-up to the subregional workshop that had been organized in Varna, Bulgaria, on 26-27 April 1999. The workshop aimed at discussing practical cases of transboundary EIA in the region, and of bilateral or multilateral EIA agreements as examples of good practice among neighbouring countries in the Balkan and Black Sea regions, and at analysing the practical information presented by the countries and their needs.

25. While in some countries of the Balkan and Black Sea regions there was no practical experience with transboundary EIA, it was stressed that some projects, initiated and supported through international financing institutions, were implementing provisions of the Espoo Convention. It was also emphasized that the financing of large-scale projects in the countries in transition by international financial institutions led to the question of who the "proponent" was and who had to start the EIA procedure?

26. It was pointed out that in the region of the Balkans and the Black Sea, knowledge of Russian was a factor that could facilitate cooperation, as translation was not an issue.

27. The results of a project developed under the Greek-Bulgarian environmental cooperation was considered to be an interesting example of cooperation between the countries to strengthen the implementation of the Convention. The Centre for European Constitutional Law (Greece) and the NGO "Wilderness Fund" (Bulgaria) coordinated the project. As a result of the research on transboundary EIA and its implementation in both countries, some conclusions and proposals for concluding bilateral EIA agreements and establishing joint EIA committees had been drawn up.

28. During the workshop it was concluded that some of the recommendations from the first subregional workshop (ECE/MP.EIA/4, annex VIII) were too ambitious and that this might be the reason for the slow progress in implementing them. While supporting the content of the recommendations, the participants suggested that the actions to be taken might be broken up into smaller, more feasible, ones.

29. Many of the countries in the region did not have practical experience in the implementation of EIA in a transboundary context, but they continued to strengthen their

knowledge on how to implement the Convention. There were countries in the region without a national EIA system, but some of them had ratified the Convention and as a Party they could implement its requirements directly.

30. Countries with a federal structure might have difficulties with the application of the Espoo Convention, because of the lack of a clear division of responsibility between the different levels of administration.

31. Transboundary infrastructure projects were common in the countries in transition in the Balkan and Black Sea regions. They required a joint EIA, joint working groups for the preparation of the EIA documentation and a joint working group for the procedural aspects.

32. Non-governmental organizations and academic and research institutions could further support the implementation of the Convention by holding meetings with the authorities and by encouraging them to take adequate action to share their scientific work and experience.

33. The knowledge and the environmental awareness of courts and civil servants should be improved to avoid delays and to allow for appeals in a transboundary context.

34. The transposition and harmonization of EU environmental legislation were considered to be helpful in the implementation of EIA in a transboundary context.

35. The participants stressed the importance of convening further subregional workshops under the work plan of the Convention.

## 2. Workshop in Szentendre

36. The workshop on the application of the Espoo Convention in Central and Eastern Europe was held on 23-24 June 2003 in Szentendre. The aim was to discuss practical cases of transboundary EIA in the region and progress in the preparation of bilateral or multilateral EIA agreements, and to share information about national legal systems.

37. The participants broadened their knowledge about national EIA system in other countries, their similarities and differences, and shared information to establish common ground for further negotiation. They exchanged practical experience gained from case studies and from negotiations. For the countries in the region that did not have practical experience with the implementation of EIA in a transboundary context, such workshops, where a small number of participants could discuss in detail the cases presented and share their experience and problems, were very useful.

38. It was concluded that it was much easier to have practical cases of transboundary EIA before the start of the negotiation of a bilateral agreement. It was very important to establish common ground with the neighbouring countries. The more similar the national systems, the more general agreement.

39. Parties should improve communication between them. It was advisable to keep in touch before the important stages of the procedure, such as public participation, distribution of EIA documentation and issuing the final decision.

40. Clearly defined timing of the stages of the EIA procedure on both sides of the border facilitated the process.

41. It was important to have compatible definitions, methods and standards. Different understandings might cause problems during joint projects.

### 3. Workshop in Belgrade

42. A workshop on transboundary EIA in South-Eastern Europe was held on 6-7 November 2003 in Belgrade. The aim was to improve cooperation in transboundary EIA in South-Eastern Europe and to exchange experiences on national legislation on EIA, with the discussion on practical cases from the participant countries.

43. The workshop concluded that it was necessary to establish an expert group comprising the participants from South-Eastern Europe in order to prepare elements for bilateral and multilateral agreements, further defining the provisions of the Espoo Convention, including provisions for the language of communication, notification and translation of documentation.

44. This expert group was expected to meet at regular intervals, the first time in March or April 2004. The secretariat was requested to prepare a first draft of these elements for consideration at this meeting. The expert group was requested to report at regular intervals to the Working Group on EIA on its progress.

45. The workshop asked the Working Group on EIA to include this activity in the draft work plan under the Convention, for adoption at the third meeting of the Parties. The workshop requested the Working Group on EIA to look into possibilities for funding this activity.

46. The workshop requested the above-mentioned expert group also to compare lists of activities subject to national EIA and prepare additional criteria for the further identification of proposed activities subject to transboundary EIA.

47. The workshop also requested the expert group to prepare criteria for the definition of “significance”, taking into account the specific requirements of the subregion.

48. The workshop recognized that data related to the environment were not well developed in the subregion. It therefore suggested that environmental data should be further developed and made available. This could be done, for example, during the preparation of the EIA documentation. It was also suggested that the appropriate international data collection programmes should be used.

49. The workshop recalled Article 3, paragraph 6, of the Convention, which indicates that the affected Party should provide reasonably available data on the affected environment in its jurisdiction. When such information is not available, it would be the responsibility of the proponent to undertake the relevant research or data collection.

50. The workshop emphasized the need for the countries in this subregion to share experiences and information on completed procedures by collecting case studies of the implementation of the Convention. The workshop requests the Working Group on EIA to consider this need when drafting the work plan.

### **B. Case studies**

#### 1. German-Polish case on transboundary EIA

51. The subject of the first case of Polish-German cooperation on transboundary EIA was the diversion of water from the border river Nysa to the German river Spree and to an opencast mine in Berzdorf, Germany.

52. The EIA procedures took almost two years (22 months) from the notification to the final decision. The most problematic aspect was the public participation, which took place from December 2000 to June 2001. There was no direct communication between the public of the affected Party and the Party of origin. The Polish Ministry of the Environment acted as an

intermediary and sent the comments in aggregated form. The Minister of the Environment's statement also included statements by other interested authorities. This was recognized to be an inefficient way of communicating.

53. It took Poland more than a month to confirm that it would participate in the transboundary EIA. The initial notification sent by Germany had set a one-month deadline. However, it was the first case – there were no precedents.

54. The second problem arose in connection with the consultations in accordance with Article 5 of the Espoo Convention. Germany considered that additional negotiations initiated by the German-Polish Transboundary Water Commission already fulfilled the requirements of the Convention. Consultations as required under the Convention were held after the final decision was made, because Poland was not satisfied with it.

55. The Polish authorities and public were hostile to the project. The Polish Minister of the Environment asked the German Federal Environment Minister for negotiations (based on Art. 15 – Settlement of disputes). In the view of Poland, Germany did not take into account the Polish complaints. In the view of Germany, the competent authority for EIA did consider the Polish complaints and took them into account in the final decision. Although an appeal against the decision in a German court is possible, no Polish citizens chose this procedure. To lodge an appeal, it has to be proved that the rights of foreign citizens have been violated and the appeal has to be lodged within one month from the time that the decision has been delivered or made available to the public. Individuals as well as companies expected a guarantee of compensation for their losses, but this was not put in the final decision. In the view of Germany, the question of liability for potential damage to individuals or companies is not part of EIA. There are sufficient provisions on liability in German domestic civil law. It seems that the dispute can be resolved.

56. Both countries were “learning by doing” and there was some misunderstanding. The public did not seem to be clearly informed about the procedure, including the rights of appeal, even if the decision included translated information on this. But the decision was translated only partially. Procedural delays were caused by the incompatibility of the EIA procedures. The final decision was made without proper consultations (see para. 49 above). Later, negotiations were carried out on the national level.

57. Problems were caused by the lack of a binding German-Polish bilateral agreement. It is important to set the procedural relationship between authorities, and to define their competences and the deadlines of the procedural stages.

## 2. Bulgarian-Romanian case on transboundary EIA

58. The Romanian and Bulgarian Foreign Ministers signed an agreement to construct a bridge over the Danube. Its environmental impact had to be assessed. The agreement did not mention the Espoo Convention, although both countries are Parties to it. The bridge that will connect the two countries is transboundary. The case was initiated via the international agreement between the Governments. The developer is Bulgaria, although Bulgaria and Romania will operate half of the bridge each. The environmental impact is also assessed jointly.

59. Bulgaria has a one-step EIA procedure at the beginning of the permitting process, whereas Romania has EIA in the final stage. The transboundary EIA took place in two stages: preliminary EIA according to the Bulgarian procedure and final EIA according to Romanian legislation.

60. Only the bridge was subject to EIA, since the railways and roads on both sides were already in place. The bridge with the road is 5 km long. The project is important for the transport infrastructure in both countries, part of the southern branch of the pan-European network. In May 2000 both countries signed the agreement on the project's technical, financial, legal and organizational aspects. The location of the bridge was decided by the international agreement. It was based on a detailed study conducted in the 1990s. The preliminary study was similar to a strategic environmental assessment (SEA). The final conclusion was based not only on the environmental assessment but also on economic and social considerations.

61. There was the question of which country was the Party of origin. In this case both countries co-owned the initiative and both were at the same time affected Parties and Parties of origin. The Joint Committee and working groups were established. One working group dealt with environmental matters. The Transport Ministers of both countries chaired the Joint Committee. The Environment Ministries were represented on it.

62. During the transboundary EIA many meetings were organized to clarify the procedures in both countries. The notification stage was skipped. The screening process was not clear, since the project fell under EIA procedures in both countries. The experts had to organize meetings in both countries with the public concerned and NGOs. The joint team drew up the EIA documentation. Only licensed experts were used. Consultations were organized in both countries.

63. During the public participation procedure, nobody objected to the bridge. NGOs had no objections either. Comments were received on mitigation and other improvements.

64. The project is currently in the stage of the final EIA as the environmental issues were straightforward. Construction is expected to start in 2005.

### 3. Estonian-Finnish case on transboundary EIA

65. The Ministry of the Environment in Estonia initiated the case for the Narva Power Plant. The Ministry was also decision maker and supervisor as the Party of origin. Tallinn Pedagogical University, the Institute of Ecology and experts formed an EIA expert team for the project.

66. A notification was sent to Finland and the Russian Federation. The latter did not respond, and further information was exchanged between Estonia and Finland only. Public participation in the draft EIA programme took the form of a public hearing in Estonia. Comments from the Ministry of the Environment of Finland were received and taken into account by the developer, who followed up the preparation of the EIA report. The final EIA had to be approved by the Ministry of the Environment of the Party of origin. The amended report was sent to Finland.

67. All communication with Finland took place in English. The notification was sent to Finland. After Finland's confirmation of its participation in the EIA procedure, the draft EIA documentation was sent. Comments from Finland were received before the public hearing in Estonia. Communication with the affected Party was greatly improved because of the informal contacts and electronic communication tools used. The amended EIA documentation was also sent to the affected Party.

68. The case was difficult because the deadlines were very tight. Finland did not have enough time (one month) to hold public hearings. Only the summary of the EIA report was translated into English, which meant that Finland did not get sufficient information.

#### 4. Croatian-Italian case on transboundary EIA

69. The subject of the Croatian-Italian cooperation on transboundary EIA was a joint project concerning sea-lines for hydrocarbon transfer.

70. Both countries were at the same time Party of origin and affected Party. The Joint Body, established in October 1998 and representing both governments, conducted the transboundary EIA procedure. Both countries were interested in developing the project.

71. The Italian and Croatian publics were informed at a very early stage of the procedure. Each country informed its own public according to its national rules.

72. The whole procedure of EIA in a transboundary context took six months.

#### 5. Croatian-Hungarian case on transboundary EIA<sup>\*/</sup>

73. The subject of the first Croatian-Hungarian case on transboundary EIA was the Novo Virje Multipurpose Hydropower System in Croatia. The proponent was the public company “Hrvatska elektroprivreda” of Croatia.

74. The national EIA procedure in Croatia started in July 1994 and it ended in February 2000. The procedure in a transboundary context started in January 2001, when Croatia notified Hungary; there is no final decision as yet. The points of contact of each country coordinated jointly the EIA procedure according to the Espoo Convention. Public hearings took place in accordance with national legislation. The Croatian delegation took part in a public hearing in Hungary. The Hungarian authorities and public were hostile to the project.

75. The affected Party did not consider satisfactory the information obtained from the Party of origin, because of insufficient information about the likely impacts on the territory of the affected Party and its reasons. The documentation of the Party of origin contained more than 10 000 pages. At the request of the affected Party, supplementary material was prepared (about 300 pages in English), and was sent to the affected Party in April 2003. It was difficult to maintain public interest during such a long process. The affected public did not show much interest in providing information and sending remarks in written form. In the Party of origin the decision-making procedure was conducted for more than ten years and the Party of origin has not yet released the final decision, pending the completion of the transboundary procedure.

76. The Party of origin put forward a proposal on how to continue the work and proposed an expert meeting to agree on an efficient implementation of the Espoo Convention's procedures, on the extent of supplementary investigations and on the definition of criteria for impact “significance” on the territory of the affected Party. The affected Party rejected this proposal and declined the invitation to the expert meeting. The Party of origin tried to meet all the requests made by the Hungarian party during the transboundary EIA procedure.

### C. Conclusions and recommendations from the case studies

77. The affected Party should be notified as soon as possible and be given more time to comment (e.g. two months). However, national administrative procedures that set deadlines for decision-making rarely make allowances for such extended transboundary procedures.

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<sup>\*/</sup> The description of this case study was based on information provided by the Party of origin (Croatia), as well as on information contained in the description of case study number 3 in Appendix 3 to Annex VIII to this report.

78. It is useful to define in bilateral agreements what should be translated so that there are no doubts about who is responsible for producing and paying for translations. Ideally, all EIA documentation should be translated, but in practice more funding as well as more time are needed.

79. The thresholds for activities not clearly defined in Appendix I to the Convention can be negotiated if they differ in the two countries that are negotiating the bilateral agreement on EIA. Countries may agree to take into account each other's thresholds.

80. The Parties may interpret some provisions of the Convention in different ways in view of their national law and practice.

81. It is important to establish a procedural relationship between the authorities, to define their competences and to set deadlines for the procedural stages.

82. Established bilateral agreements speed up the transboundary EIA process; such agreements are especially required if the administrative systems and procedures differ in the countries involved.

83. For joint infrastructure projects it is difficult or nearly impossible to identify the affected Party and the Party of origin.

84. The experience gained during the construction of joint infrastructure projects by two or more Parties may be very helpful in applying for funding by structural funds programmes.

#### **D. Conclusions and recommendations**

85. Practical experience with transboundary procedures under the Convention is still limited but growing. However, not all cases are publicly available for reference. It would be worthwhile intensifying efforts to disseminate such information and experience. Workshops, seminars, training courses and expert-exchange programmes help to spread information about current EIA practices and to develop a network to strengthen the Convention's implementation.

86. When organizing workshops and meetings, the practical arrangements and logistics should be carefully considered. Distances between countries are still considerable and fares may deter potential participants. EIA is a tool that is increasingly popular and a number of international events dedicated to this topic are organized each year. The calendar of such events should be considered when planning workshops and meetings to prevent them coinciding. Advantage may be taken of events that are attended by numerous participants by organizing meetings back to back, thus limiting travel time and fares.

87. Experience shows that the application of the Espoo Convention often involves issues that are regulated by or relevant to other UNECE environmental conventions or international agreements. It is, consequently, advisable that the focal points for the different conventions or international agreements should be made aware of each other's existence and exchange information on procedures, timing and competences. This would help in future to streamline the process and avoid misunderstandings and overlap.

88. The possibility of using a common language is a considerable advantage when sharing experience and information – both written and spoken. However, it poses a risk of restricting the exchange of information to the subregion of a given language and may result in limiting contacts with other groups or subregions. It is, therefore, useful to set up an international



exchange system for information on documents, events and practice, which should be accessible to countries from outside the subregion.

89. During recent years the Internet has become accepted as a tool for effective and cost-efficient long-distance communication. Full advantage should be taken of it, wherever possible, to save time, travel costs and printing costs. However, it should not be the sole means of communication.

90. The points of contact are crucial for an effective exchange of information, as they are the institutions to which the notification has to be sent. The contact points may assume other responsibilities and functions, such as those of focal points, depending on the agreements between the Parties concerned and on the legal and administrative systems on both sides of the border. Possible functions of the points of contact include:

(a) Initiating function: the contact point is responsible for the first formal contact, initiating the transboundary procedure; all further working relations take place directly between the authorities involved (a contact list of authorities is usually submitted by the contact point as part of the initiation procedure);

(b) Mail-box function: the contact point acts as an intermediary in the information flow, and receives information and transmits it to the designated authorities and transmits their comments back. This is useful when the Parties are not familiar with each other's administrative systems and division of competences; on the other hand, it slightly lengthens the procedure;

(c) Coordinating function: the contact point distributes information and collects comments and reactions, thus acting as one of the partners in the process. This is considered effective if there are many comments to process (e.g. a number of statutory consultees or the general public).

91. Practical experience to date demonstrates that there are a number of possible approaches to bilateral and multilateral agreements. They each have advantages and limitations, and are briefly discussed below:

(a) Case-by-case approach: the procedure is set out as the need to carry out a transboundary EIA arises. In some countries transboundary assessments had to be dealt with before any formal agreement was made. In such cases the practical experience gained influences the contents of the final agreement;

(b) Political agreement: this option may prove the quickest to achieve. It requires all Parties involved to show the political will to cooperate. The Convention may be referred to as a basis for action or as a reference document (in particular where one of the signatories to the agreement is not a Party to the Convention). As a rule no detailed provisions are contained in such an agreement: it may either be a simple declaration of political will or set out the responsible agencies or administrative bodies in each of the countries. Details are then worked out case by case and based on practical experience. The agreement provides a mandate for the administrative bodies to undertake a transboundary procedure;

(c) Joint committee: the countries involved draw up rules of procedure for the processing of a transboundary EIA and in particular agree to set up a joint committee, usually made up of members of administrative bodies and agencies as well as designated experts (in some cases experts are designated case by case). The composition of the joint committee and

its rules of procedure are set out in the agreement while detailed solutions are to be adopted by the committee itself, case by case. This allows a transboundary procedure, when it emerges, to proceed without undue delay. It also helps those involved to “learn by doing” and to improve as they gain experience;

(d) Detailed agreement: the countries involved decide to prepare a detailed agreement setting out all the elements of the transboundary EIA procedure and delegate all responsibilities to agencies within the countries. This solution, while providing the most detailed guidance, is also the most time-consuming as all possibilities have to be provided for. Practical experience shows that considerable time and effort are required to negotiate such detailed agreements (more than ten years in some cases). The dynamics of the recent changes in legislation and procedures in the region seriously impair the setting-up of a detailed but inflexible procedure.

92. The choice of agreement will depend on many factors and a country may decide to have different types of arrangements with different neighbours.

93. Bilateral agreements are not a prerequisite for implementing the Convention. Parties may choose to implement its provisions directly.

94. Experience gained so far has yielded basic information about national EIA systems, including simple flow charts and the designation of the authorities involved, including those relevant for public participation. Such information may be considered as the minimum information to be provided. It may be prepared in advance and updated as needed by all countries, as material for their own public and as materials to be provided to the authorities and the public of the affected Party (after translation). Such documents may be made available to all concerned or interested, for instance on a designated web page.

95. During the initial stages of EIA, often at the screening stages of a transboundary procedure, a need emerges for up-to-date information about the state of the environment in the potentially affected Party. Therefore, it seems useful that, where such information exists in an electronic format, countries make available (e.g. on a web page) information such as: the location of protected areas (including designated NATURA2000 sites); ecological corridors; and designated land use (as stated in land-use plans where applicable).

96. Transboundary activities (such as a bridge or a road) are not explicitly covered by Appendix I to the Convention, but it is understood that they should be dealt with as infrastructure projects with transboundary impacts.

97. Transport or infrastructure projects are potentially a good opportunity to compare national environmental standards. They also necessitate a certain degree of harmonization of procedures. This is possible only if some mechanism for the exchange of information on the existing national legal systems and procedures is established, and if the systems and standards of neighbouring countries are taken into account in the decision-making process. The Convention plays an important role as a reference document for regional and subregional cooperation, in particular in facilitating the creation of a coherent EIA report or reports covering the entire project.

98. An area that needs further investigation is large international projects. They should be investigated both at the stage of policy, plan and programme and also as large-scale, often transboundary, projects (as in the case of infrastructure developments such as roads, railways and pipelines). International funding institutions should be encouraged to request the

application of a transboundary EIA procedure.

99. An area of further investigation might be the ‘tiering’ of projects to allow for full coverage and minimum overlap between SEA and EIA in a transboundary context. The level of detail to be considered in a transboundary SEA and EIA should be coordinated.

**Annex VI**

**DECISION III/6  
INFORMATION EXCHANGE ON ENVIRONMENTAL IMPACT ASSESSMENT  
IN A TRANSBOUNDARY CONTEXT**

**The Meeting,**

**Recalling** its decision II/6 on the database on environmental impact assessment and its decision II/7 on the networking facility attached to the database on environmental impact assessment,

**Recognizing with appreciation** the commitment of the Government of Poland and its officers to the establishment, provision and development of the database on environmental impact assessment over the past seven years,

**Recognizing** that Parties were not, for a variety of reasons, able to exploit the database and the networking facility to their full extent,

**Wishing to** continue to share information on the implementation of the Convention by means of an information-exchange mechanism,

**Favouring** a simpler exchange of information via the web site of the Convention, with links to national web sites where available,

1. **Decides** to close database and to transfer its data to the secretariat;
2. **Urges** Parties to submit to the secretariat information on and, where available, electronic links to: transboundary cases of environmental impact assessment (EIA); national EIA authorities; national databases on transboundary EIA; bilateral and multilateral agreements and arrangements; and other information related to the implementation of the Convention;
3. **Requests** the secretariat to make this information available on the web site of the Convention for further review by the Working Group on Environmental Impact Assessment.

**Annex VII**

**DECISION III/7  
SECOND AMENDMENT TO THE ESPOO CONVENTION**

**The Meeting,**

Recalling its decision II/10 on the review of the Convention and paragraph 19 of the Sofia Ministerial Declaration,

Wishing to modify the Convention with a view to further strengthening its application and improving synergies with other multilateral environmental agreements,

Commending the work done by the task force established at the second meeting of Parties, by the small group on amendments and by the Working Group on Environmental Impact Assessment itself,

Noting the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998, and recalling the Protocol on Strategic Environmental Assessment, done at Kiev, Ukraine, on 21 May 2003,

Also noting relevant European Community legal instruments, such as directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by directives 97/11/EC and 2003/35/EC,

Conscious that an extension of Appendix I will strengthen the importance of environmental impact assessments in the region,

Recognizing the benefits of international cooperation as early as possible in the assessment of environmental impact,

Encouraging the work of the Implementation Committee as a useful tool for the further implementation and application of the provisions of the Convention,

1. Confirms that the validity of decisions taken prior to the entry into force of the second amendment to the Convention, including the adoption of protocols, the establishment of subsidiary bodies, the review of compliance and actions taken by the Implementation Committee, are not affected by the adoption and entry into force of this amendment;

2. Also confirms that each Party shall continue to be eligible to participate in all activities under the Convention, including the preparation of protocols, the establishment and participation in subsidiary bodies, and the review of compliance, regardless of whether the second amendment to the Convention has entered into force for that Party or not;

3. Adopts the following amendments to the Convention:

(a) In Article 2, after paragraph 10, insert a new paragraph reading

11. If the Party of origin intends to carry out a procedure for the purposes of

determining the content of the environmental impact assessment documentation, the affected Party should to the extent appropriate be given the opportunity to participate in this procedure.

- (b) In Article 8, after Convention insert  
  
and under any of its protocols to which they are a Party
- (c) In Article 11, replace paragraph 2 (c) by a new subparagraph reading  
  
(c) Seek, where appropriate, the services and cooperation of competent bodies having expertise pertinent to the achievement of the purposes of this Convention;
- (d) At the end of Article 11, insert two new subparagraphs reading  
  
(g) Prepare, where appropriate, protocols to this Convention;  
  
(h) Establish such subsidiary bodies as they consider necessary for the implementation of this Convention.
- (e) In Article 14, paragraph 4, replace the second sentence by a new sentence reading  
  
They shall enter into force for Parties having ratified, approved or accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three fourths of the number of Parties at the time of their adoption.
- (f) After Article 14, insert a new article reading  
  
Article 14 bis  
  
Review of compliance  
  
1. The Parties shall review compliance with the provisions of this Convention on the basis of the compliance procedure, as a non-adversarial and assistance-oriented procedure adopted by the Meeting of the Parties. The review shall be based on, but not limited to, regular reporting by the Parties. The Meeting of Parties shall decide on the frequency of regular reporting required by the Parties and the information to be included in those regular reports.  
  
2. The compliance procedure shall be available for application to any protocol adopted under this Convention.
- (g) Replace Appendix I to the Convention by the Appendix to this decision;
- (h) In Appendix VI, after paragraph 2, insert a new paragraph reading  
  
3. Paragraphs 1 and 2 may be applied, mutatis mutandis, to any protocol to the Convention.

## **Appendix**

### **LIST OF ACTIVITIES**

1. Crude oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 metric tons or more of coal or bituminous shale per day.
2. (a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more, and  
(b) Nuclear power stations and other nuclear reactors, including the dismantling or decommissioning of such power stations or reactors <sup>1/</sup> (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt 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; or
  - Solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.
4. Major installations for the initial smelting of cast iron and steel and for the production of non-ferrous metals.
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 metric tons finished product; for friction material, with an annual production of more than 50 metric tons finished product; and for other asbestos utilization of more than 200 metric tons per year.
6. Integrated chemical installations.
7. (a) Construction of motorways, express roads <sup>2/</sup> and lines for long-distance railway traffic and of airports <sup>3/</sup> with a basic runway length of 2,100 metres or more;  
(b) 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. Large-diameter pipelines for the transport of oil, gas or chemicals.
9. Trading ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 metric tons.

10. (a) Waste-disposal installations for the incineration, chemical treatment or landfill of toxic and dangerous wastes;  
(b) Waste-disposal installations for the incineration or chemical treatment of non-hazardous waste with a capacity exceeding 100 metric tons per day.
11. Large dams and reservoirs.
12. Groundwater abstraction activities or artificial groundwater recharge schemes where the annual volume of water to be abstracted or recharged amounts to 10 million cubic metres or more.
13. Pulp, paper and board manufacturing of 200 air-dried metric tons or more per day.
14. Major quarries, mining, on-site extraction and processing of metal ores or coal.
15. Offshore hydrocarbon production. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 metric tons/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.
16. Major storage facilities for petroleum, petrochemical and chemical products.
17. Deforestation of large areas.
18. (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; and  
(b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 per cent of this flow. In both cases transfers of piped drinking water are excluded.
19. Waste-water treatment plants with a capacity exceeding 150 000 population equivalent.
20. Installations for the intensive rearing of poultry or pigs with more than:
  - 85 000 places for broilers;
  - 60 000 places for hens;
  - 3 000 places for production pigs (over 30 kg); or
  - 900 places for sows.
21. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.
22. Major installations for the harnessing of wind power for energy production (wind farms).

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<sup>1/</sup> For the purposes of this Convention, 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.



<sup>2/</sup> For the purposes of this Convention:

- "Motorway" means a road specially designed and built for motor traffic, which does not serve properties bordering on it, and which:

(a) Is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other by a dividing strip not intended for traffic or, exceptionally, by other means;

(b) Does not cross at level with any road, railway or tramway track, or footpath; and

(c) Is specially signposted as a motorway.

- "Express road" means a road reserved for motor traffic accessible only from interchanges or controlled junctions and on which, in particular, stopping and parking are prohibited on the running carriageway(s).

<sup>3/</sup> For the purposes of this Convention, "airport" means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (annex 14).

**Annex VIII**

**DECISION III/8**

**GUIDANCE ON PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT  
ASSESSMENT IN A TRANSBOUNDARY CONTEXT**

**The Meeting,**

Recalling its decision II/3 on guidance on public participation in environmental impact assessment in a transboundary context,

Convinced that public participation forms an essential part of transboundary environmental impact assessment,

Noting that for many Parties, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters will contribute significantly to the strengthening of public participation in their implementation of the Convention on Environmental Impact Assessment in a Transboundary Context,

1. Recognizes the need for guidance to assist competent authorities and the public in organizing effective public participation in environmental impact assessment in a transboundary context;

2. Adopts the Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context appended to this decision;

3. Invites Parties to provide information to the Working Group on Environmental Impact Assessment on the usefulness of the Guidance and any suggestions for its future development.

## **Appendix 1**

### **Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context <sup>\*/</sup>**

This Guidance has been developed according to decision II/3 of the second meeting of the Parties to the Espoo Convention (Sofia, 26-27 February 2001) by the Russian Federation (the Agency for Environmental Assessments, “ECOTERRA”, represented by Nikolay Grishin), with the support of the United Kingdom (Jim Burns and Roger Gebbels), the secretariat of the UNECE Espoo Convention (Wiek Schrage), the European Commission (David Aspinwall and Thisvi Ekmektzoglou) and members of the UNECE Task Force on public participation in environmental impact assessment (EIA) in a transboundary context.

The case studies of public participation in a transboundary EIA were presented by the following experts, members of the Task Force: Tatyana Javanshir (Azerbaijan), Jacqueline Metodieva and *Katya Peicheva* (Bulgaria); Nenad Mikulic (Croatia); *Veronika Versh* (Estonia); *Leena Ivalo* and Ulla-Riitta Soveri (Finland); Georges Guignabel (France); *Gia Zhorzholiani* (Georgia); F6ris Edina (Hungary); Federica Rolle and Carmela Bilanzone (Italy); *Gulfia Shabaeva* and Tatyana Filkova (Kyrgyzstan); Daniela Pineta (Romania); *Nikolay Grishin* (coordinator of the Task Force) and Sergey Tveritinov (Russian Federation); *Jim Burns* and *Roger Gebbels* (United Kingdom).

The participants in the Moscow meeting of the Task Force were those members of the Task Force shown above in italics, together with Wiek Schrage (UNECE), Thisvi Ekmektzoglou (European Commission), Vladimir Markov and Zinaida Muzileva (Russian Federation), Olga Razbash (Russian Regional Environmental Centre) and Olga Tokmakova (International Public Network for Environmental Impact Assessment).

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<sup>\*/</sup> The Guidance has been reproduced as received by the secretariat.

## **Contents**

1. Introduction
  - 1.1. Role and benefits of public participation in environmental decision-making
  - 1.2. The background, mandate and aim of the guidance
  - 1.3. Case studies as the basis for the guidance
2. Public participation provisions of the Convention and their practical application
  - 2.1. Establishment of national EIA procedure that permits public participation
  - 2.2. Providing an opportunity for the public in an affected Party that is equivalent to that provided to the public in the Party of origin
  - 2.3. Financing and translation
  - 2.4. Notification of affected Party and public of Party of origin. Timing.
  - 2.5. Joint responsibility of concerned Parties for participation of public of affected Party in a transboundary EIA
  - 2.6. Distribution of the EIA documentation and submission of comments by the public of the affected Party
  - 2.7. Final decision and results of public participation
3. Recommendations for increasing effectiveness of public participation in a transboundary EIA
  - 3.1. Preliminary work with potential participants
  - 3.2. Contacts with potential affected Parties: Bilateral and multilateral agreements; Joint bodies
  - 3.3. Organizing points of contact for public
  - 3.4. Role of the public
4. Final provisions
  - 4.1. Implementation of the guidance
  - 4.2. Review

## **Appendices**

Appendix 2. Provisions of the Convention dealing with public participation

Appendix 3. Case studies

## **1. INTRODUCTION**

### **1.1 Role and benefits of public participation in environmental decision-making**

1. Principle 10 of the Declaration of the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro (Brazil, 1992) emphasizes that environmental issues are best handled with the participation of all concerned citizens, at the relevant level. Agenda 21 adopted by UNCED recognized the important role of public participation in environmental impact assessment (EIA) in achieving sustainable development (item 23.2 of Agenda 21). The World Summit on Sustainable Development in Johannesburg (South Africa, 2002) developed further these provisions. The principles promoted by these conferences are fully integrated into the provisions of the UNECE Convention on Environmental Impact Assessment in a Transboundary Context,<sup>1</sup> which came into force in 1997 (hereinafter referred to as the Convention).

2. When governments enable the public to participate in decision-making, they help meet society's goal of sustainable and environmentally sound development. Public participation in environmental decision-making and, in particular, in EIA, may lead to some benefits in these processes. As a result of public participation, the process of decision-making, up to and including the final decision, becomes more transparent and legitimate. Public debate on proposed activities among all interested groups at an early stage of decision-making may prevent or mitigate conflicts and adverse environmental consequences of the decisions with transboundary impacts.

3. For many UNECE member countries, the provisions of the Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters<sup>2</sup> provide the basic requirements on public participation in environmental matters. This is also the case in regard to the provisions on public participation in the development of plans and programmes under the Protocol on Strategic Environmental Assessment (SEA) adopted at the Kiev Ministerial Conference (2003) and signed by thirty-six States and European Community.<sup>3</sup>

### **1.2 The background, mandate and aim of the guidance**

4. The importance of public participation in a transboundary EIA and the need for guidance on it were recognized by the Parties to the Convention at their first two meetings (ECE/MP.EIA/2, annex VI, item 4, and MP.EIA/2001/3, decision II/3).

5. At the first meeting of the Parties to the Convention (Oslo, 18-20 May 1998), it was agreed that the work-plan for the implementation of the Convention for 1998-2000 should include work to prepare guidance on public participation in transboundary EIA. A first draft version of guidance was developed by the Russian Federation, as lead country, with financial support from Italy.

6. The second meeting of the Parties of the Convention (Sofia, 26-27 February 2001) welcomed the work carried out by the Russian Federation in developing draft guidance. This meeting recommended the Parties to develop this guidance further, *inter alia* on the basis of case studies, and to put forward proposals for consideration at the third meeting of Parties. Further work was carried out by the Russian Federation as lead country with financial support from the United Kingdom and with the practical support of the Secretariat of the Convention. The Russian Federation nominated the Agency for Environmental Assessments "Ecoterra" to co-ordinate the practical work on this issue.

According to decision II/3 of the second meeting of the Parties, the aim of the guidance is to assist competent authorities and the public in organizing effective public participation in transboundary EIA.

### **1.3 Case studies as the basis for the guidance**

7. As recommended by the second meeting of the Parties, case studies of public participation in transboundary EIA were used as the basis for the guidance. A special format for describing these case studies was developed by the Russian Federation with the assistance of the United Kingdom and further refined on the basis of comments received from the Parties. This format was sent by the Secretariat of the Convention to the focal points of the Convention with a request to present case studies.

8. The following countries submitted case studies: Azerbaijan, Bulgaria, Croatia, Estonia, Finland, France, Georgia, Hungary, Italy, Kyrgyzstan, Romania, Russian Federation and United Kingdom (Appendix 3). The authors of these case studies were invited to participate in a meeting of experts of the UNECE Task Force on public participation in transboundary EIA in Moscow (25-27 September 2003) at which the case studies and draft guidance were discussed. Views expressed by delegates at this workshop have been taken into account in preparing this guidance as well as some ideas in the most relevant guidance on the practical application of the Convention.<sup>4</sup>

9. The procedure for effective public participation in transboundary EIA contains a number of aspects, some of which are clearly described in the Convention. Other important aspects, for example, translation, timing, public comments or objections and financial aspects are left to the discretion of the Parties to define. This approach is consistent with other European law, e.g., the EU EIA Directive requires public consultation, but the detailed arrangements are for the EU Member States to lay down, consistently with the requirements of the Directive. This guidance provides recommendations based on practical implementation deriving from the case studies on the described aspects of public participation in transboundary EIA found in the Convention, as well as the ones left to the Parties' discretion.

## **2. PUBLIC PARTICIPATION PROVISIONS OF THE CONVENTION AND THEIR PRACTICAL APPLICATION**

10. The following important aspects of public participation in transboundary EIA are established by the Convention:

(a) establishment of a national EIA procedure regarding proposed activities listed in Appendix I to the Convention that permits public participation (Article 2.2);<sup>5</sup>

(b) the opportunity for equivalent public participation in the EIA procedure for both the public of the affected Party and the public of the Party of origin (Article 2.6);

(c) notification of the affected Party as early as possible and no later than when the Party of origin informs its own public about a proposed activity (Article 3.1); the notification shall contain the information provided in Article 3.2 of the Convention;

(d) joint responsibility of the concerned Parties for the participation of the public of the affected Party in the areas likely to be affected in a transboundary EIA, giving this public the possibilities to make comments or objections (Article 3.8); this responsibility applies when the competent authority of the affected Party informs the Party of origin that it wishes to take part in the transboundary EIA procedure;

(e) joint responsibility of the Parties concerned for the distribution of the EIA documentation and for submission of comments by the public of the affected Party in the areas likely to be affected (Article 4.2); and

(f) a requirement that, in the final decision on the proposed activity, the Parties ensure that due account is taken of the comments on or objections to the proposed activity from the public of the affected Party in the areas likely to be affected. These include comments on the EIA documentation (Article 6.1).

11. These provisions may seem obvious and simple. In national EIA procedures and legislation they may well be routine, standard practices. But in a transboundary context they may be ill defined or perhaps not addressed at all. So when transboundary EIA cases arise they may present unfamiliar issues for which Parties are not always prepared – issues such as time allowed for responses, different consultation bodies, knowing whom to contact and the most suitable methods of doing so, language and translation issues, legal systems, etc.

12. This guidance seeks to address some of these issues by reflecting on information and practice taken from case study material submitted by several countries with experience of transboundary EIA.

## **2.1 Establishment of national EIA procedure that permits public participation**

13. Article 2.2 of the Convention requires Parties to establish a national EIA procedure that permits public participation. The Convention does not specify the detail of such a procedure recognizing that it is a matter for the national authorities to determine. But the provisions need to reflect the obligations that arise from compliance with the Convention.<sup>6</sup>

14. It is recommended that, as a minimum, national EIA procedures should include provisions that:

(a) the public is informed on any proposals relating to an activity with potential adverse environmental impacts in cases subject to an EIA procedure in order to obtain a permit for a given activity;

(b) the public in the areas likely to be affected is entitled to express comments and opinions on the proposed activity when all options are open before the final decision on this activity is made;

(c) reasonable time-frames are provided allowing sufficient time for each of the different stages of public participation in the EIA procedure;

(d) in making the final decision on the proposed activity, due account is taken of the results of the public participation in the EIA procedure.

15. The essence of public consultation is the communication of a genuine invitation to give advice and a genuine consideration of that advice. To achieve consultation, the consulting party must supply sufficient information to the consulted party to enable it to tender helpful advice. Sufficient time must be given by the consulting to the consulted party to enable it to do that, and sufficient time must be available for such advice to be considered by the consulting party. Sufficient, in that context, does not mean ample, but at least enough to enable the relevant purpose to be fulfilled.<sup>7</sup> The consulted party in this context is not a “Party” in the Convention sense, but it could extend to competent and environmental authorities, non-governmental organizations (NGOs), local community groups, individuals, etc.

16. Many countries have some elements in their national EIA procedures, which permit public participation (see Box 1).

**Box 1: Elements of effective national EIA procedures for public participation**

- The public in Finland, France, Italy, the United Kingdom, and in other countries that are member States of the European Union, is informed in accordance with the EC EIA Directive (Directive 85/337/EEC, as amended by Directive 97/11/EC and by Directive 2003/35/EC<sup>8</sup>), i.e. at the very early stage of the procedure (Appendix 3, case studies 6, 7, 8 and 10).
- According to the EU Legislation (EIA Directive), a reasonable time-frame for different phases of the EIA procedure shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making:
  - in Croatia and in Italy EIA documentation is available to the public during periods of 30 days (case study 8);
  - in Estonia at least 2 weeks should be given for public comments on the EIA programme (a programme of investigations that should be carried out for preparing EIA report) and for the EIA statement (case study 4);
  - Finland provides 4 weeks for public discussion of the EIA programme and 7 weeks for discussion of the EIA report (case study 7);
  - in the United Kingdom, for marine dredging projects a period of 10 weeks is allowed for initial consultation. A further period of 6 weeks is allowed to comment on the initial consultation summary and any supplement to the Environmental Statement prepared in response to these consultations (case study 10).
- In the Russian Federation, EIA documentation and the results of public discussion about a proposed activity, **organized** by local government, should be presented by the proponent to the environmental authority (state environmental expertise) for checking and receiving the permit (national legislation).
- Information about the EIA procedure and the results of proposed activities may be put into the web site of the competent authorities (Finland, case study 7; Hungary, case study 3).

## **2.2 Providing an opportunity for the public in an affected Party that is equivalent to that provided to the public in the Party of origin**

17. According to the Convention, the affected Party must express an interest in participating in the EIA procedure of the Country of origin, following notification. If this interest is expressed, Article 2.6 of the Convention states that the Party of Origin shall provide opportunities for the public of the affected Party to participate in the EIA process that are equivalent to those provided to the public in the Party of origin.

18. The Convention does not define what is meant by “equivalent”. In a given situation it is for the Party of origin to decide what constitutes “equivalent”. At one level the method of public participation offered to the public in the affected Party might be identical to the



provisions afforded to the public in the Party of origin; while at another level, different methods may be applied to reflect different circumstances and public needs. The Convention does not specify that the means of public participation in EIA procedure in the Party of origin and the affected Party should be identical – only that the opportunity provided to the public of the affected Party should be equivalent.

### **How have Parties approached this?**

19. In general, the case studies (Appendix 3) have shown practical examples of how Parties to the Convention have addressed these issues. Some countries have included in their national legislation provisions for participation of the public of an affected Party; others have made arrangements for this through other means, discussed in this section. The case studies have indicated that equivalent opportunities for public participation in EIA procedures in the Party of origin and in the affected Party were often realized in practice (see Box 2). In some case studies, the public of the Party of origin and the public of the affected Party were informed about the start of EIA procedure at the same time and more particularly from the very beginning of this procedure.

#### **Box 2: Case studies where the public of concerned Parties was informed about the EIA procedure and about the opportunity to take part in this procedure at an equivalent time**

- The operator of the project (case study 1) informed the public of all concerned Parties (Azerbaijan, Georgia, Turkey) about the start EIA procedure and about the possibility to take part in this procedure at the equivalent time – from the very beginning of the EIA procedure.
- The same situation (informing the public of the concerned Parties from the very beginning of the EIA procedure) occurred in some joint projects: Bulgaria/Romania (case study 2), Italy/Croatia (case study 8), Estonia/Finland (case study 4) and Finland/Sweden (case study 6).

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Note: It is up to the concerned Parties (both Party of origin and affected Party) to ensure that the public of the affected Party in the areas likely to be affected is informed of the proposed activities

20. Another way in which an “equivalent opportunity” was given to the public in an affected Party was demonstrated by the case study of a proposal to construct the Finnish nuclear plant “Loviisa 3” (case study 5). Here the proponent prepared, translated and distributed information about the proposed project and a summary of the EIA programme and EIA report to representatives of the public of both the Party of origin and the affected Party. Information was made available in both the Finnish and Russian languages.

21. Equivalent opportunities in public participation have also been demonstrated through the case studies with respect to time limits for commenting on or objecting to a proposed activity. The case studies (see Box 3) showed that the Party of origin takes responsibility for establishing the time limits for comments by members of the public to be submitted on the proposed activity. In many of the case studies, identical time limits were established for the public of all the concerned Parties. In such cases, it is important to ensure that the available

time is not reduced by the time taken for the transmission of documents, or other communications, between Parties. This is discussed further in section 2.4 below.

**Box 3: Equivalent time limits for commenting on or objecting to a proposed activity for public in the areas likely to be affected in concerned Parties**

- The operator of the project (case study 1) established the equivalent time limits (a 60-day period of public discussion of the project before the permitting procedure and then 45-90 days during that procedure) for the public of all concerned Parties in Azerbaijan and Georgia according to an Agreement between the Parties.
- An equivalent time limit (1 month/30 days) was established for the public of both Parties for two joint projects: Bulgaria/Romania (case study 2) and Italy/Croatia (case study 8).
- The competent authority of the Party of origin (Estonia, case study 4) gave the public of the affected Party (Finland) more time (1 month) for commenting or objecting, than to its own public (2 weeks for the EIA programme; 3 weeks for EIA statement).
- An equivalent time limit (60 days) was established by the Party of origin (Finland, case study 5) for its public and for comments from the affected Party (Russian Federation).
- Equivalent time limits were established by the Party of origin (Finland) for its public and for the public of the affected Party (Sweden) in two projects: 4 weeks for the EIA programme and 7 weeks for the EIA report (case study 6); 6 weeks for the EIA programme and 7 weeks for the EIA report (case study 7).
- An equivalent time limit (10 weeks for initial consultations, and then a further period of 6 weeks to comment on the initial consultation summary and any supplement to the environmental statement prepared in response to the consultations) was established by the Party of origin (United Kingdom, case study 10) for the public of this Party and for receiving comments from affected Parties in the case of a marine dredging project.

22. However, one should also bear in mind Article 3.8 of the Convention, which provides that the Party of origin together with the affected Party shall ensure that the public of the affected Party in the areas likely to be affected is informed of, and is given the opportunity to make comments or objections on, the proposed activity. The responsibility therefore lies on both concerned Parties. The authorities in the affected Party will wish to satisfy themselves that the Party of origin has allowed sufficient time so that effective consultation with the public in the affected Party can be undertaken.

### **2.3 Financing and translation**

23. The financial aspect is one of the most important aspects of the public participation procedure in transboundary EIA. Financial support for organizing this procedure may be necessary to cover the costs of:

- (a) translating the EIA documentation into the language of the affected Party;
- (b) translating the comments and recommendations of the public of the affected Party into the language of the Party of origin;
- (c) disseminating EIA materials (including booklets, brochures) within the affected Party;

- (d) payment for information distributed through, e.g. newspapers, radio, TV, e-mail or Internet;
- (e) organizing public hearings and meetings of the public of the Parties concerned, etc.

24. Not all of the activities listed above will need to be carried out for every project. For example, even when countries do not share a common, official language, translation may not always be required if it is agreed that the public in an affected Party is sufficiently conversant with the language of the Party of origin to make it unnecessary. These are matters on which it is appropriate for the competent authorities in the Party of origin and the affected Party to reach agreement, either in the context of formal bilateral or multilateral agreements or on a case-by-case basis.

25. As is evident from the case studies (see Box 4) the costs of organizing public participation projects may vary very considerably from one case study to another, reflecting different economic circumstances and possibly different methods of undertaking the public participation. Moreover, in some cases the figures may not completely represent all of the costs associated with the public participation procedure. Some costs are difficult to quantify – for example additional administration time to deal with competent authorities in an affected Party or translating documents received in the language of an affected Party.

26. For many countries the question is: in a transboundary EIA, where such costs are likely to arise, who is responsible for meeting the costs of participation by members of the public in the affected Party? The Convention itself is silent on the question of costs for translation and other associated costs though the question has been discussed and it has been recommended that the Party of origin should normally meet such costs. In accordance with decision II/1 (included in the report of the second meeting of the Parties, which is available on the web site of the Convention at <http://www.unece.org/env/eia/mop.htm>), in general, the Party of origin is responsible for translation as well as for the cost. According to the Guidance on the Practical Application of the Espoo Convention (as appended to decision III/4 and available at <http://www.unece.org/env/eia/guidance/>), the cost of public participation in a transboundary EIA (including the translation) can be covered by:

- (a) the developer (proponent);
- (b) the Party of origin;
- (c) the affected Party;
- (d) an International Financial Institution;
- (e) a combination of two or more of the above mentioned bodies.

27. It may be helpful to consider each of these possible options.

- (a) The proponent meets the costs

28. It is a generally accepted principle of environmental protection that the “polluter pays”. If this were applied in EIA cases under the Convention it would suggest that the responsibility for meeting essential costs should fall to the proponent or to the competent authority in the Party of origin.

<b>Box 4: Assessment of cost of public participation in a transboundary EIA in affected Party according to case studies (Appendix 3)</b>			
Case study reference (in Appendix 3)	Party of origin (PO) / affected Party (AP)	Cost of public participation in AP	Responsibility for meeting the cost of public participation
1	Azerbaijan / Georgia <sup>9</sup>	US\$ 1,500,000 <sup>10</sup>	Proponent (operator)
2	Bulgaria / Romania <sup>9</sup>	No information	Public hearings – their participants; translation – local authorities and joint bodies
3	Croatia / Hungary	€16,000	Competent authority of AP
4	Estonia / Finland	No information	Proponent
5	Finland / Russia	€1,500 +	Proponent
		+ €500	NGO in AP
6	Finland / Sweden	No information	Proponent
7	Finland / Sweden	about €8,000 – 10,000	Proponent
8	Italy / Croatia <sup>9</sup>	about €5,000 – in each country	Proponent (joint company)
9	Kyrgyzstan / Kazakhstan	US\$ 500	NGO
10	United Kingdom / France, Belgium, Denmark, Germany, Netherlands	US\$ 80,000	Proponent
		US\$ 300	Competent authority of PO

29. Analysis of the case studies received suggests that this concept is broadly supported by proponents and also by the competent authorities in the Party of origin. In seven of the ten case studies the proponent accepted responsibility for the financial aspects of public participation in transboundary EIA procedure in Party of origin and affected Party (see Box 4).

30. There is, however, no requirement for this in the Convention. On the other hand, the proponent has an obligation to pay the cost of an EIA procedure in accordance with the national legislation of some countries, for example, in accordance with Finnish EIA law:

The Finnish Act on EIA procedure (section 22) states that “the developer shall answer for the cost of investigating and publishing information on environmental impact and related hearings, and for the cost of translation needed to assess transboundary impact.”

31. In preparing national EIA regulations, this provision of the Finnish EIA Act may serve as a useful example of how a legislative provision may be made to provide for costs that may arise in transboundary EIA.

32. Unless provided for in national law, it may not be possible to require a proponent to meet the costs associated with public participation in transboundary EIA. In such cases the competent authority will only be able to request the proponent to meet the costs. A good way of resolving costs issues may be bilateral or multilateral agreements between concerned Parties.<sup>11</sup>

33. Most proponents of major schemes that fall within the scope of the Convention are, however, likely to be aware of their environmental responsibilities and the need to ensure there is an understanding of the activity and its potential effects on all affected Parties. Project proponents should be generally aware that it is in their interests for the successful implementation of their project to reassure the public and affected Parties that appropriate safeguards and mitigation measures have been built into the project. Project proponents may be expected to work closely with the competent authorities in both the Party of origin and the affected Party to achieve this result. As analysis of the case studies suggests, they have generally been supportive and have provided for the costs of translation.

In the United Kingdom, the proponent of a major marine dredging scheme agreed on a voluntary basis to meet the cost of translating all of the EIA documentation into the languages of five countries that could have been affected by its proposal. The proponent also paid for translation costs to send initial notification letters to all five countries. The estimated cost to the proponent was in the region of US\$ 80,000 (case study 10).

34. While proponents may agree to meet costs of translation and other costs relating to public participation in a transboundary EIA, there has to be recognized that they will be unlikely to meet unlimited, unspecified and unnecessary costs. It is important to remember that at this stage the proponent is not guaranteed to be given development consent for the proposed activity. The proponent may agree to meet reasonable costs to improve the likelihood of getting such consent; but equally it will not wish to incur expense of little value.

(b) The Party of origin meets the costs

35. If the proponent is unwilling or unable to meet the costs of translation, etc., the competent authority in the Party of origin must consider whether it has to meet them. For most projects within scope of the Convention, approval will be subject to a development consent procedure administered by the competent authorities. These procedures may require the proponent to pay an application fee or consent fee designed to offset the administrative, management and legal costs associated with processing the application. Fees will vary from country to country and they may be a fixed rate or variable. However, a common feature may be a wish to recover legitimate costs properly incurred by the competent authority in handling the application.

36. For transboundary EIA projects, Parties may wish to consider whether there is any need for a scale of charges or fees that is greater than applies to other projects without transboundary effects. It will be for Parties to consider whether or how this could be done and whether a ceiling on fee levels should be imposed so that a proponent would have certainty about costs or whether costs would be chargeable to the proponent on a cost-recovery basis. Whichever method is used, it is important that costs are properly controlled to reflect only

those that are essential to the procedure of public participation in transboundary EIA and that the funding arrangements are transparent.

(c) An affected Party meets the costs

37. It may be unlikely that an affected Party will be asked to meet costs arising from its decision to take part in the EIA procedure for a project originating in another country that is likely to have significant environmental effects in the affected Party. It is more likely that the costs associated with public participation will be met by the Party of origin, as recommended by the Meeting of the Parties. However, in exceptional circumstances it may be necessary if no other source of funds is available. And though it may be unexpected and unwelcome, it may not be wholly negative.

38. Taking responsibility for these costs means that the affected Party assumes control of the procedure. Since it is meeting costs that would normally be met by the Party of origin, the affected Party will be able to argue for extensions of time allowed for consultation to ensure adequate translation of documentation, if required, and to ensure adequate public consultation with members of the public in the affected Party. Within the time scales agreed with the Party of origin, it can control the procedure, ensuring that the public participation for the project is at least as comprehensive as that set for projects authorized under its own national procedures. If these are better than those of the Party of origin this may be an advantage.

39. Nor need it be expensive if the only costs in the affected Party are incurred in advertising the development and giving details of where to find details of the EIA documentation and where and how to make comments or objections.

40. In providing comments to the Party of origin, an affected Party that had to meet its own costs may feel under no obligation to submit its comments in the language of the Party of origin.

41. In one case study under consideration (a multipurpose hydropower system on the River Drava, near the border between Croatia and Hungary, case study 3) the summary of the environmental impact study (sent in English) and relevant parts from the whole documentation concerning the transboundary impacts and the statement of the competent authority of the Party of origin were translated by the competent authority of the affected Party.

(d) An international financial institution meets the costs

42. International financial institutions (IFIs) generally would not be responsible for directly undertaking public consultation or covering the costs of it for a proposed project. Most IFIs have environmental procedures and policies that require that EIA, including public participation, is undertaken before they will take a decision whether to finance projects that have the potential for significant environmental impacts (see, for example, the environmental policy and procedures of the European Bank of Reconstruction and Development (EBRD), available at <http://www.ebrd.com/enviro/index.htm>).

43. Although IFIs may not directly provide funds for the public consultation, they do play a very important role in benchmarking against international standards and increasing the expectation of the public to have adequate information and opportunities for participation in an EIA procedure. Some IFIs, such as EBRD, have specific commitments to the Espoo Convention in their policies; some have other relevant commitments such as the World Bank Group's Safeguard Policies on International Waterways. Any project seeking IFI financing

will need to ensure that their planning process includes provisions to meet the relevant standards.

(e) A combination of two or more of the above-mentioned bodies

44. There may also be occasions, for example when it is intended that transboundary projects such as roads and bridges will be jointly proposed and executed, when a Party is both Party of origin and affected Party. In such cases the concerned Parties will probably develop a joint management team to develop and oversee the project and the relevant EIA procedures. Given the circumstances, it is likely that each Party will simply assume responsibilities for public participation as determined under its own national EIA procedure.

45. But specific arrangements may also need to be made to ensure that members of the public in all affected countries have access to a single EIA report that provides information about the effects of the whole of the project and proposed mitigation measures. There may also need to be arrangements to ensure an exchange of information so that the decision-makers are fully aware of the views expressed by the public on the other side of the frontier.

46. In the case of the project to construct a bridge over the River Danube between the cities of Vidin in Bulgaria and Calafat in Romania (case study 2), the participants from relevant authorities in both countries, from NGOs and from the concerned public paid the costs of participation in the hearings themselves. The translation of the documentation was organized by joint Project Implementation and Management Units, which were established in the structures of the competent authorities of both countries as a result of agreement between the Governments. The local municipalities in each country covered the costs of the organization and translation into the Romanian and Bulgarian languages in the public hearings.

47. Other means of funding are also possible on an *ad hoc* basis. For example, in the case of the Nuclear Power Plant “Loviisa-3” in Finland (case study 5), the proponent met the cost of translation and publishing the EIA booklets in the language of the affected Party, and an NGO of the affected Party met the cost of dissemination of these booklets through the public of the affected Party and of receiving their comments.

48. It is important to emphasize that not every development will need a complex public inquiry or a series of public meetings. But it is essential that public participation is carried out effectively, in particular if these are not features of the national EIA procedures in the concerned Parties. In such cases the cost of public participation may be very small, especially in comparison with overall budget of the proposed activity, but it is recommended to include cost of public participation in the budget of this activity.

It may be recommended that the proponent of an activity should have financial obligations for organizing public participation in Party of origin and in affected Party, including payment for translation and dissemination of EIA materials for the public.

49. A key issue in effective public participation in a transboundary EIA procedure is the availability of adequate information about the proposed activity, its likely effects on the environment and the measures proposed to mitigate them. While it may not always be necessary, a good and timely translation of the EIA documentation into the language of the affected Party will greatly facilitate meaningful involvement in the EIA procedure of the authorities and members of the public in the affected Party.

50. On the other hand, a poor translation may impede the process if in translation key information is “lost” or inadvertently misrepresented. Given the detailed, technical nature of some environmental reports this may occasionally happen. Difficulties with translation may never be entirely eliminated but they may be reduced if the proponent responsible for carrying out the EIA ensures the documentation is written in clear and easily understandable language.

51. Those responsible for organizing public involvement in a transboundary EIA procedure should also pay special attention to preparing relevant EIA documentation for the public of the concerned Parties in language that is clear and understandable. This is especially the case when preparing summary documents, such as the non-technical summary of EIA documentation. For many people, these summaries will be all that they will have time, or take trouble, to read. It is therefore important that the summary provides the essential information and is presented clearly and concisely, avoiding language that may create difficulties in translation to another language.

52. Responsibility for translation is a particular case of a general responsibility for financial aspects of the procedure of public participation in a transboundary EIA. The case studies indicated that the proponent usually assumes responsibility for financial aspects, such as translation of transboundary EIA materials (Box 4). In the case of joint projects of two Parties, payment for the translation may be by joint bodies or joint private firms of these Parties. This was done in the case of the bridge over the River Danube between Bulgaria and Romania (case study 2) and the Italian-Croatian under-sea gas pipeline (case study 8), respectively.

53. In the majority of case studies presented, the summary of the EIA documentation was translated for the public of affected Parties (case studies 1, 3, 4, 5, 7, 8, 10). The Party of origin or the proponent may decide to translate either all or the majority of the EIA documentation. At the very least, the non-technical summary of the EIA documentation should be translated, and additional information may be provided to the public of the affected Party upon request.

54. Another possible way of dealing with the issue of translation is the possibility for the full EIA documentation to be presented by the Party of origin or the proponent to the public of the affected Party upon request without translation. This was the case in the Finnish nuclear power plant “Loviisa-3”; the proponent presented the full EIA report in the English language upon the request of an NGO of the affected Party (case study 5). This is likely to be helpful in cases where the Parties share a common working (or official) language and the documentation exists in this language.

It would be useful, if financial responsibility for organizing public participation in affected Party, including volume of translated materials, responsibility for translation, number of copies were determined in the first stage of consultation or/and fixed in the agreement between concerned Parties.

## **2.4 Notification of affected Party and public of Party of origin. Timing**

55. Article 3.1 of the Convention requires the Party of origin to notify the affected Party as early as possible about a proposed activity that is likely to have a significant adverse transboundary impact. It shall do this no later than when informing its own public about that proposed activity.

56. Notifications shall be sent to the special Points of contact regarding notification of affected Parties. A list of such points of contact is in the web site of the Convention



([http://www.unece.org/env/eia/points\\_of\\_contact.htm](http://www.unece.org/env/eia/points_of_contact.htm)). It is necessary to emphasize that Points of contact regarding notification are not always the same as the national Focal points (<http://www.unece.org/env/eia/focalpoints.htm>), which are used only for administrative matters regarding the Convention. Where the contacts are different it may be appropriate to copy the notification to the Focal point for information and to facilitate the procedure.

57. In terms of the obligations under the Convention, the purpose of the notification is to enable a potentially affected Party to decide whether it wishes to be involved in the EIA procedure of the Party of origin for the proposed activity that is likely to cause a significant adverse transboundary impact (Article 3.3). A notification shall contain, inter alia, information listed in Article 3 of the Convention. In addition, the first meeting of the Parties of the Convention recommended Parties to use to the extent possible the format approved by this Meeting when transmitting a notification according to Article 3 of the Convention (decision I/4). Details of this format can be found in the web site of the Convention (<http://www.unece.org/env/eia/notification.htm>).

58. Neither the notification format nor the Convention specifies a period of time that must be allowed for the affected Party to decide whether it wishes to take part in the EIA procedure. It is for the Party of origin to set a timeframe consistent with its national procedures. But in doing so, the Party of origin should recognize that in forming its view on whether it wishes to take part in the EIA procedure, the authorities in the potentially affected Party may wish, or be required by its own national legislation, to consult with regional or local competent authorities, statutory environmental authorities and members of the public. To ensure the affected Party is able to form a considered view, the Party of origin may have to allow a significantly longer period for a response than would normally be allowed in the case of non-transboundary EIA.

59. The Estonian-Finnish case study (4) is a positive example of how this was done in practice, with the competent authorities in the Party of origin providing a more generous time limit for comment from the affected Party than for the public in its own country (Box 5).

60. How much additional time should be allowed for the affected Party is a matter for agreement between the concerned Parties. But, typically, a Party of origin that allows a three-week period for such consultation under its national EIA procedures might need to allow between six and seven weeks in the case of a transboundary EIA. This additional time will be required particularly if the Party of origin invites the authorities in the affected Party to make the arrangements and it is to allow for an equivalent period of public participation in the affected Party. The extended period will allow for transmission of documents to the authorities in the affected Party, arrangements for public advertising, an equivalent time period for public participation, and receipt and transfer of comments from the affected Party to the authorities in the Party of origin (Box 5).

<p>It is recommended that the notification allow adequate time for consultation within the affected Party's administration before that Party responds. If it responds positively to an invitation to take part in the EIA procedure, it is recommended that the authority in the affected Party should provide information to the authority in the Party of origin about the way(s) in which public participation may most effectively be carried out in the affected Party.</p>
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<b>Box 5. Time limits established for receiving comments or objections from public of affected Party on EIA programme and on EIA report</b>			
Case study reference (in Appendix 3)	Party of origin / Affected Party	Time limits (days) established for receiving comments or objections from public of affected Party on:	
		EIA programme	EIA report
1	Azerbaijan / Georgia / Turkey <sup>12</sup>	60	45-90
2	Bulgaria / Romania <sup>12</sup>		30-31
3	Croatia / Hungary		30+30 (in addition)
4	Estonia / Finland	30 / 14 <sup>13</sup>	30 / 21 <sup>13</sup>
5	Finland / Russia	60	60
6	Finland / Sweden	28 (4 weeks)	49 (7 weeks) + 42 (extension)
7	Finland / Sweden	42 (6 weeks)	49 (7 weeks); 28 – for a new alternative
8	Italy / Croatia <sup>12</sup>		30 <sup>14</sup>
10	United Kingdom / France, Belgium, Denmark, Germany, Netherlands		70 (10 weeks) for initial consultations + 42 (6 weeks) to comment additional materials

61. The case studies revealed that, in those cases where the affected Party decided that it wished to take part in the EIA procedure, the information provided at the notification stage usually contained sufficient information to allow for early discussion with the public of the affected Party on the EIA programme.

62. The term “as early as possible”, which is used in the Convention, was clarified by the analysis of the case studies. They showed that in some cases “as early as possible” might mean the very beginning of the EIA procedure (Box 2). The participation of the public of the affected Parties was most effective in cases where it began during discussion of the EIA programmes, and then continued as the results of EIA procedures or EIA reports were discussed. Precisely this form of public participation was realized in the Estonian-Finnish (case study 4), Finnish-Russian (case study 5) and Finnish-Swedish (case studies 6 and 7) projects (Box 5). The operator of the Azerbaijan-Georgian-Turkish project (case study 1) also notified the public of the affected Parties at the start of the EIA procedure.

63. In all the case studies received, notifications were sent to the competent authorities of the affected Parties before the final decisions about proposed activities were made, so that they had the opportunity to inform members of their own public.

64. The extent to which there is scope for involving the public of the Party of origin in the screening and scoping stages of the EIA procedure for a specific project depends on the

provisions within the national EIA legislation and procedures. If these are provided for in national legislation, the stage at which they begin in the Party of origin may provide a suitable moment for “early notification” of the proposed activity to the public in the affected Party.

65. The concerned Parties shall provide reasonable timeframes for the public to participate in the different phases of transboundary EIA, allowing sufficient time for informing the public and for the public to prepare and participate effectively during the transboundary EIA procedure.

There are two main options for determining reasonable time limits for the response of the public in an affected Party:

- Timing should be determined as a result of preliminary consultations of the competent authorities of concerned Parties;
- Timing may be based on timing of national EIA procedures of concerned Parties.

66. As discussed earlier (section 2.2 of this guidance), the Convention states (Article 2.6) that the Party of origin must ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin. In practical terms this means that unless they communicate directly with members of the public in the affected Party, the authorities in the Party of origin will need to allow additional time to provide for the transfer of documents to the authorities in the affected Party and for these authorities to communicate information to the public likely to be affected; and of course for a similar additional period after expiry of the period of time allowed for public participation in the Party of origin for receiving comments or objections from the public of affected Party (case study 5).

67. Usually in practice (Box 5), the time limits established for receiving the comments or objections on the EIA programmes (about 30-40 days) do not differ very much from the time limits established for receiving such responses on EIA reports (about 40-60 days). Shorter time limits (about 2 weeks for the EIA programme and 3 weeks for the EIA report) may be established for those countries that have good communication and similar national EIA systems (see, for example, case study 4).

It may be recommended that:

- The concerned Parties should provide for early public participation in a transboundary EIA, when all options are open and effective public participation can take place;
- Time-limits for notifying and for receiving the responses of the public of the affected Party should be determined as a result of preliminary consultations of the concerned Parties or fixed in bi- or multi-lateral agreements of these Parties;
- Usually such time limits for receiving the public responses may be about 30-40 days for the EIA programme and about 40-60 days for the EIA report (Box 5).

## **2.5 Joint responsibility of concerned Parties for participation of the public of the affected Party in a transboundary EIA**

68. According to Article 3.8 of the Convention, the concerned Parties (Party of origin and affected Party) shall ensure that the public of the affected Party in the areas likely to be affected:

- (a) be informed of the proposed activity, and
- (b) be provided with possibilities for making comments or objections on the proposed activity, and

shall be responsible for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin.

69. This section of the guidance develops the obligation of the Party of origin to inform the affected Party about a proposed activity (paragraph 2.4 of the guidance); but if the affected Party responds affirmatively to the notification, there is then a joint obligation on all concerned Parties for the participation of the public of the affected Party in a transboundary EIA. The concerned Parties are expected to make the practical arrangements for such public participation. Different aspects of such arrangements that were made in practice appear in the case studies (Box 6).

70. The case studies demonstrated that for **effective participation, the public must be able to understand the information, and this leads to the conclusion that the documentation should be available in a language that is understandable to them** as discussed in section 2.3. This could require translation of the documents, or relevant parts of documents, or/and non-technical summaries of documents. It means that the same information should be provided to the public of the affected Party as to the public of the Party of origin.

71. The following recommendations are made for the concerned Parties:

- (a) the Party of origin should be responsible for the translation (into the language(s) of the affected Parties) of all the documents that are disseminated within the procedure of a transboundary EIA, for providing the information and for receiving the comments;

- (b) if the Party of origin distributes the information this should happen in cooperation with or according to arrangements agreed with the affected Party; affected Parties may decide to handle the distribution of information via particular authorities or nominated organizations; the concerned Parties could distribute the information to the public by means of the mass media, e-mail, the Internet, public hearings or by other appropriate means;

- (c) the Party of origin and the affected Party should make arrangements for collecting the comments from the public, and sending them to the Party of origin; there may be a need for translating the comments of the public so that the competent authority of the Party of origin can understand these comments;

- (d) if costs are a problem, the Party of origin may be able to recover the cost from different sources, for example the proponent of the activity.

72. It should be strictly recommended that, if the public of the affected Party sends its comments or objections to the competent authority of the Party of origin, it should also send copies of these comments or objections to the competent authority of the affected Party. This

recommendation is made because only states are Parties to the Convention, and the competent authorities of the Party of origin and affected Party are responsible for carrying out the procedure of transboundary EIA. That is why the competent authorities of both Parties – Party of origin and affected Party – should have all information dealing with this procedure (including the comments or objections of the public of the affected Party).

**Box 6. The concerned Parties have joint responsibility for participation of public of affected Party in a transboundary EIA and they have to work together for this**

- The operator (one of the proponents of the project, a trans national corporation) of the international oil pipeline Baku-Tbilisi-Ceyhan (Azerbaijan-Georgia-Turkey, case study 1) made equivalent arrangements for organizing public involvement in transboundary EIA procedure in all the concerned Parties by:
  - informing the public about the start of the EIA procedure;
  - advertisements in local, regional and national newspapers;
  - informing the public by post, TV and radio;
  - posters along the pipeline route;
  - organizing public hearings and meetings with the proponent;
  - publishing and dissemination booklets with EIA information;
  - organizing about 30 points of contact with the public along the pipeline route.
- The proponent of the construction of the nuclear plant “Loviisa-3” (a private firm from Finland, case study 5) translated, published and sent to the affected Party (to the competent authority and to the NGO responsible for organizing public involvement in the transboundary EIA) the volume of EIA material (booklets) that had been requested in the language of the affected Party (Russian).
- The proponent of dredging for aggregates in the English Channel/La Manche (a private firm from the United Kingdom, case study 10) translated EIA material into the languages of the affected Parties (Danish, French, German and Dutch) and spent about US\$ 80,000 for this purpose.
- The Parties (Bulgaria and Romania) of a joint project – a bridge over the Danube River (case study 2) – organized a special unit for the implementation of the project, including work with the public of both Parties (translation of material into the languages of the concerned Parties, organizing public hearings and informing, receiving comments and objections of the public).
- The Party of origin (Finland) invited the public of the affected Party (Sweden) to participate in public hearings on proposed activities (case study 6).
- Usually the proponent from the Party of origin met the cost for translation of the EIA material and its publishing (often as booklets) for the public of the affected Party (Box 4).

73. It should be mentioned that the Convention provides that the Party of origin is responsible for presenting the EIA material to the affected Party. There may be situations when the Party of origin receives a response from the affected Party, but the Party of origin does not know whether the views of the public of the affected Party are reflected in this response. However, it is recommended that the Party of origin should be in close contact with the affected Party as it has an interest that public participation took place. This derives from Article 3.8 of the Convention, which clearly puts the burden on ensuring public participation on the concerned Parties, i.e. Party of origin and affected Party.

## **2.6 Distribution of the EIA documentation and submission of comments of public of affected Party**

74. The Convention lays down (Article 4.2) that:

- The Party of origin shall furnish the affected Party, as appropriate through a joint body where one exists, with the EIA documentation.
- The concerned Parties (the Party of origin and the affected Party) shall arrange for:
  - (a) distribution of the EIA documentation to the authorities and the public of the affected Party in the areas likely to be affected, and
  - (b) for the submission of comments to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin, within a reasonable time before the final decision is taken on the proposed activity.

75. This suggests that:

- The Party of origin should transmit the EIA documentation to the affected Party and receive comments;
- The Party of origin usually should be responsible for the translation of the EIA documentation, of the comments received from the affected Party and of all the documentation that the concerned Parties send each other during the transboundary EIA procedure;
- The Party of origin and the affected Party should specify the arrangements for distributing the EIA documentation to the authorities and the public of the affected Party in the areas likely to be affected, distribute the documentation, collect comments on the documentation and transmit them to the Party of origin or its competent authorities.

76. Such very important practical aspects regarding public participation in transboundary EIA as financing and translation, and their implementation in practice, are discussed in section 2.3 of this guidance. **Financial responsibility and translation of EIA documents by the Party of origin is good practice but is not a requirement of the Convention.** But analysis of received case studies suggests that this concept is broadly supported by the proponents (Box 4) or it may be requirement of national EIA legislation (for, example, in Finland).

77. Different methods of informing the public, distributing the EIA documentation and receiving public comments may be recommended for effective public participation in a

transboundary EIA (Box 7). These recommendations were developed from analysis of good practice in applying the Convention (see case studies, Appendix 3) and some experts' assessments. It is obvious that the effectiveness, benefits and/or disadvantages of each method or combination of methods depend on the circumstances of the particular projects.

78. Because the Convention deals with relations between Parties (i.e. States), it does not set out the practical information about the process of public participation, which is necessary for effective public participation. Some Parties may have national laws containing these information requirements, in some cases derived from the Aarhus Convention, or from the EU EIA Directive. Box 8 lists, first, the Convention's requirements for the content of the EIA documentation and, second, recommendations derived from regulations of the Russian Federation and the United Kingdom. It should be mentioned that examination of the documents – i.e. the opportunity to study the EIA documentation and to make notes – should be free of charge. This obligation can be met through the establishment of a convenient location where the information can be kept in an accessible form and consulted at reasonable hours. As regards copies or other photocopying services the authority can impose reasonable charges consistent with the main aim of providing for effective public participation.

**Box 7: Methods used for effective public information (I), distribution of the EIA documentation (D) and receipt of comments from the public (R) (the methods were ranged by mean of expert assessments according to the ratio efficiency/cost)**

- development of web sites or web pages with EIA information on the Internet with proposals on public participation and used for receipt of comments from the public (I, D, R);
- dissemination of EIA information and receipt of responses from public by e-mail (I, D, R);
- notification of stakeholders in the region likely to be effected (owners, the public, NGOs) and national and international NGOs by post with request to answer a questionnaire (I, D, R);
- organizing points of contact with the public in and around the site of the proposed activity and its possible effects (I, D, R);
- organizing public hearings and public meetings with representatives of proponent and authorities and preparing reports of such meetings (I, D, R);
- publishing and disseminating booklets and other materials with EIA information with request to answer a questionnaire (I, D, R);
- advertisements in local, regional and national newspapers (I) and (I, R) if the request for public response was done;
- informing by TV and radio (I) and (I,R) if the request for public response was done;
- posters in and around the site of the proposed activity and its possible effects (I) and (I,R) if the request for public response was done.

**A combination of these methods depending on the circumstances of the particular project may be most effective.**

**Box 8: The content of the EIA documentation and recommendations on the information which should be provided to the public in order to organize effective public participation**

**Content of EIA documentation which should be provided to the public in accordance with the Convention (Appendix II):**

- (a) a description of the proposed activity and its purpose;
- (b) a description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no-action alternative;
- (c) a description of the environment likely to be significantly affected by the proposed activity and its alternatives;
- (d) a description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance;
- (e) a description of mitigation measures to keep adverse environmental impact to a minimum;
- (f) an explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used;
- (g) an identification of gaps in knowledge and uncertainties encountered in compiling the required information;
- (h) where appropriate, an outline for monitoring and management programmes and any plans for post-project analysis; and
- (i) a non-technical summary including a visual presentation as appropriate (maps, graphs, etc.).

**Practical information for organizing effective public participation:**

- (j) the name and address of the proponent;
- (k) the name and address of the competent authority that will make the decision on proposed activity;
- (l) location of the proposed activity;
- (m) an address in the Party or origin or affected Party where the EIA documents relating to the proposed activity may be inspected, and the latest date on which they are available for inspection;
- (n) whether copies of the EIA documentation, including the non-technical summary, are available and if so whether they are free;
- (o) if there is a charge, the amount of the charge;
- (p) the address to which comment or objections about the proposed activity and/or EIA documentation should be made and
- (q) the final date for such comments.



## 2.7 Final decision and results of public participation

79. The Convention states (Article 6.1) that the Parties shall ensure that, in the final decision on the proposed activity, due account is taken of:

- (a) the outcome of the EIA, including the EIA documentation,
- (b) the comments thereon received pursuant to Article 3.8 and Article 4.2, and
- (c) the outcome of the consultations as referred to in Article 5.

80. The comments received pursuant to Article 3.8 should include any comments or objections from the public of the affected Party on the proposed activity. The comments received pursuant to Article 4.2 should include any comments from the public of the affected Party on the EIA documentation.

The comments or objections of the public of the affected Party on the proposed activity and on the EIA documentation, resulting from the consultation, should be taken into account in the final decision on the proposed activity

81. This provision is implemented in practice in different ways.

82. In Azerbaijan and Georgia, the public was informed about this by the proponent and by the competent authorities of these countries (case study 1). In the case of the bridge over the Danube (case study 3), the Bulgarian Ministry of Environment and Water (the competent authority of one of the concerned Parties) reflected in the decision on the preliminary EIA the results of public consultations.

83. The information on the EIA decision was published in a national Bulgarian newspaper and copies were given to the proponent (Bulgarian Ministry of Transport and Communications), the local municipality and the authorities concerned. The decision was translated into English and was sent to the Romanian Party through Project Implementation and Management Units that were established within the administrative structures of the competent authorities of both Parties.

84. In accordance with the Finnish national EIA law, the coordination authority must include a summary of the views expressed by the public on its statement on the EIA programme and EIA report (case study 6). The final decision is given separately and later, pursuant to other Acts, which stipulate the announcement of the final decision. The authority that grants the permit will announce the final decision. The competent authority will send the final decision to the point of contact of Finland, who will send it to the point of contact of the affected Party.

85. According to the national law of Croatia and of Italy (case study 8), the proponent has the obligation to make publicly available the decision for the public of its own country.

86. In the United Kingdom (case study 10), the procedure is specifically designed to ensure that the views expressed by the public are taken into account. United Kingdom EIA legislation requires the competent authority to publish decisions and in doing so to state that in reaching a decision it has taken the environmental information into account. Environmental information includes representations made the public. The proponent prepares a summary of all comments received and of any discussions held in an effort to resolve concerns that may have been raised. As necessary a supplement to the Environmental Statement is also prepared. These documents are copied to all those who commented, with a period of six weeks allowed

for comments to these documents. The final decision should be made available to the authorities of the affected Parties as required under Article 9 of the amended EU EIA Directive and of Article 6.2 of the Convention.

87. Decision II/1 of the second meeting of the Parties (“Bilateral and Multilateral Cooperation”) recommended that if (affected) individuals of the affected Party are given a right to appeal against the decision, extra information on these possibilities may be necessary, for instance in a special information brochure (ECE/MP.EIA/4, para. 68, available at <http://www.unece.org/env/eia/mop.htm>). The Guidance on the Practical Application of the Espoo Convention (appended to decision III/4) recommends that the information about such a right of appeal should be given in an annex to the decision.

### **3. RECOMMENDATIONS ON INCREASING EFFECTIVENESS OF PUBLIC PARTICIPATION IN A TRANSBOUNDARY EIA**

88. Analysis of the case studies shows that there are some aspects of public participation in a transboundary EIA that are not described in the Convention directly, but which may increase the effectiveness of public participation in this procedure.

#### **3.1 Preliminary work with potential participants**

89. Projects that have transboundary effects generally have to be determined within the legal framework established for EIA within the Party of origin. The principles of good administration require that applications are dealt with efficiently and that decisions are taken as quickly as possible. Usually there are time constraints within which a decision is expected to be taken. Consequently the procedures for transboundary EIA and public participation will also have limited time scales. To maximize the time available, and to ensure an effective procedure for transboundary EIA, the following preliminary measures or activities may be useful:

(a) to establish effective relations with national focal points of the Convention and with points of contact regarding notification in their own countries for a clear understanding of how they should interact in cases of transboundary EIA;

(b) to inform potential proponents of projects with possible transboundary effects about the need for transboundary EIA with public participation according to the provisions of the Convention;

(c) to recommend to potential proponents of projects with possible transboundary effects to include in the budgets of these projects adequate resources for financing measures aimed at public participation in a transboundary EIA;

(d) to recommend to potential proponents of an activity with possible transboundary effects to be in contact with the competent authorities from the very beginning of the EIA procedures for these projects so that they have early knowledge of whether these projects requires a transboundary EIA with participation of the public of the affected Party;

(e) to establish effective relations with relevant authorities involved in transboundary EIA procedures in their own countries;

(f) to understand which NGOs and groups of the public may be interested in and have relevant skills for participation in transboundary EIA; to establish contacts (by e-mail,

fax, telephone and so on) with these NGOs and groups of the public.

90. It would be useful if Parties (competent authorities, points of contact regarding notification ([http://www.unece.org/env/eia/points\\_of\\_contact.htm](http://www.unece.org/env/eia/points_of_contact.htm)) and focal points (<http://www.unece.org/env/eia/focalpoints.htm>)) were to establish effective relations with their counterparts in potential affected Parties (neighbouring countries). These would help promote and develop an understanding of the legislative background and practice of carrying out national procedures of EIA in potential affected Parties. In preparing for future transboundary EIAs, it could be very useful to receive information about the criteria used for identifying activities that should be subject to EIA, time scales for EIA, the manner in which public participation is organized, methods of informing the public and collecting public comments and, objections and so on. Preliminary work by the competent authorities of Finland (Party of origin) and the Russian Federation (affected Party) in the planning of the Nuclear Power Plant “Loviisa-3” may be taken as an example of good practice (case study 5). Contacts between the relevant authorities were established before the start of this project. The affected Party nominated an organization (an NGO) that agreed to be responsible for organizing the future involvement of the Russian public in the transboundary EIA procedure. That is why the Party of origin and the proponent received the comments of the public of the affected Party on time (within the 60-day limit established by Party of origin).

91. It would be useful if competent authorities of concerned Parties would develop a special web page on their existing web site dealing with transboundary EIA and would inform all potential participants in EIA procedures in its own country and in potential affected Parties about this. Such web pages may contain information about proposed activities with likely transboundary effects and the modalities for public participation in transboundary EIA (timetable, points of contact, sources of additional information, public hearings and so on).

92. An order of a Russian competent authority issued in summer 2003<sup>15</sup> may be taken as an example of moving in this direction. According to this order, information about all applications received for expertise (checking) and permission by federal and regional bodies of state environmental expertise should be presented on the web site of these bodies of the Ministry. These would include activities that may have transboundary effects. Having such information, the public may decide whether to participate in these projects.

### **3.2 Contacts with potential affected Parties: Bilateral and multilateral agreements; Joint bodies**

93. Bilateral or multilateral agreements concerning transboundary EIA between potential affected Parties may be a practical way to overcome difficulties due to differences between legislation and EIA practice of the different Parties.

94. Decision II/1 of the second meeting of the Parties (“Bilateral and multilateral cooperation in the framework of the Convention on environmental impact assessment in a transboundary context”) has a chapter on “Information and public involvement” (ECE/MP.EIA/4) that may lead to a better understanding of the different aspects of public involvement in transboundary EIA.

95. In regions where direct communication between countries is politically sensitive or difficult, there can often still be cooperation on environmental issues. In these circumstances, it is sometimes more effective to use a third party or joint body to help with the notification. For example, transboundary impacts are often in bodies of water with several littoral states. UNEP’s Regional Seas Programme has set up structures around the world that might be useful for communication in transboundary EIA (for example, the Black Sea Environmental

Programme and Caspian Environment Programme).

96. In addition to the items mentioned in the document “Bilateral and multilateral cooperation” (ECE/MP.EIA/4), it may be recommended to include in bilateral or multilateral agreements such details of public involvement as:

- responsibility for organizing public participation;
- time scale;
- financial aspects of public participation;
- translation of materials for the public;
- methods of informing the public and receiving their comments;
- volume and format of EIA materials presented to public;
- methods of informing the public about final decision on a proposed activity, etc.

97. Parties are recommended to establish, where appropriate, joint bodies for better management of the transboundary EIA procedure, and, in particular, public participation in this procedure. These joint bodies may be useful and important in regions where joint EIAs are common. **It would be useful to provide a status for such joint bodies that would permit them to receive financial support from project proponents for public participation in transboundary EIA.**

98. In the case studies presented, there was an example of such cooperation in the joint project dealing with the construction of a bridge over the Danube between the cities of Vidin in Bulgaria and Calafate in Romania (case study 2). A special agreement was signed between the Governments of Bulgaria and Romania for construction of the bridge. This agreement included obligations on joint EIA. A Joint Working Group on environmental problems was established to coordinate the environmental procedures. Project Implementation and Management Units were established within the administrative structures of the competent authorities for better implementation of the project, including public involvement. Establishment of these bodies improved matters in relation to public participation, for example, the Units organized translation of the EIA documentation.

### 3.3 Organizing points of contact for the public

99. One of the first tasks of the Parties of the Convention is to establish effective working national points of contact for notification and focal points, which have different obligations in the application of the Convention. Some Parties to the Convention decided to have one point, which serves as the point of contact for notification and as the focal point for administrative matters. This may lead to a useful saving of time during the EIA procedure.

100. In practice it might also be useful to establish a point of contact for each specific project for the public, so the public would always be communicating with someone knowledgeable about the proposed project, and thereby increasing the effectiveness of public involvement overall. Such a point of contact may be a person or a division of the competent authority or other authorities, a private firm, an institution, an NGO, etc. In the case study of the oil pipeline Baku-Tbilisi-Ceyhan (case 1) the proponent invited a private firm to organize public participation in transboundary EIA in two countries (Azerbaijan and Georgia) and used its own special division for work with the public.

101. In the case studies there were two situations where NGOs were invited by the competent authority to be responsible for organizing public involvement in the transboundary EIA: the Nuclear power plant “Lovissa 3” (case study 5; Finland-Russia) and a paper mill (case study 9; Kyrgyzstan-Kazakhstan). In these case studies, NGOs worked effectively and they did not ask for financial support from the authorities of the affected Parties. The cost of these actions was relatively small (about US\$ 500, Box 4). The main benefit of establishing such points of contact with the public is in fact that they can act quickly and effectively so that the procedure is not unduly delayed; comments of the public of the affected Parties were received and transmitted to the Parties of origin on time.

It may be recommended that a special body or a special person should be created or nominated on behalf of the authorities to coordinate public participation in transboundary EIA. At the same time, final responsibility lies with state authorities.

### **3.4 Role of the public**

102. The public should participate fully in transboundary EIA in order to make both the process of environmental decision-making on projects with transboundary effects and the final decisions on such projects more transparent and legitimate. The public should organize itself for effective participation in a transboundary EIA by:

- (a) developing contacts and cooperation with relevant local, national, foreign and international NGOs and experts that may be involved in transboundary EIA;
- (b) organizing and participating in activities of national and international public networks and public centres on EIA;
- (c) taking part in education and training programmes on EIA;
- (d) supporting the dissemination of information about the provisions and the implementation of the Convention, case studies, and other relevant information dealing with transboundary EIA.

103. When the public of a Party considers that it would be affected by a significant adverse transboundary impact of a proposed activity, and when no notification has taken place in accordance with the provisions of the Convention (Article 3.1), the public of the affected Party should be able to apply to its competent authority to enter into a process of discussions with the competent authorities of the Party of origin on whether there is likely to be a significant adverse transboundary impact according to the provisions of the Convention (Article 3.7). In this situation, if the public of a Party considers that it would be affected by a significant adverse transboundary impact of a proposed activity, it may request the competent authorities of the concerned Parties to allow public participation in a transboundary EIA procedure under the provisions of the Convention, and in accordance with this guidance. In these cases the Parties concerned are encouraged to include the public that made the request in the procedure of transboundary EIA.

104. The public should be encouraged to take part in transboundary EIA together with representatives of the competent authorities of the concerned Parties, the public of other countries on a basis of partnerships, cooperation and objectivity.

## **4. FINAL PROVISIONS**

### **4.1 Implementation of the guidance**

105. The Parties, the competent authorities, the public and the secretariat of the Convention are encouraged to adopt the necessary measures to put this guidance into practice. These measures include the establishment of a clear regulatory framework providing procedural and institutional mechanisms and proper compliance programmes.

106. The guidance should be made available by putting it on the Convention's web site.

107. Nothing in this guidance shall be construed as diminishing any of the rights of public participation in EIA or in other environmental decision-making processes that are or may be guaranteed under the laws of any Parties or under any agreement to which it is a Party.

108. The provisions of this guidance shall not affect the right of a Party to maintain or introduce measures providing for more extensive public participation in EIA than recommended by this guidance.

### **4.2 Review**

109. The Parties, the competent authorities and the public (at national, regional and local levels), and the secretariat of the Convention are encouraged to collect and disseminate information dealing with any aspects of public participation in transboundary EIA. This information will be used for further developing and reviewing this guidance.

110. The Parties should consider the extent to which this guidance has been implemented, and review it at their fourth meeting on the basis of national reports to be provided to the secretariat of the Convention by November 2006 at the latest.

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<sup>1</sup> For brevity, the abbreviation "transboundary EIA" will be used henceforth instead of the term "environmental impact assessment in a transboundary context"; other terms in the guidance have the same sense as in the Convention.

<sup>2</sup> This Convention was adopted in 1998 in Aarhus and entered into force in 2001. More information on the Aarhus Convention, as it is known may be found at <http://www.unece.org/env/pp/>. See also the document "Public participation in strategic decision-making" (MP.PP/WG.1/2003/5, of 26 August 2003) prepared by Secretariat in consultation with Bureau to the Aarhus Convention.

<sup>3</sup> The text of the Protocol on SEA is available at <http://www.unece.org/env/sea/>.

<sup>4</sup> Appended to decision III/4 and developed by Finland in collaboration with Sweden and the Netherlands.

<sup>5</sup> In references such as "Article 2.2" the first number refers to the Article of the Convention and is followed by the paragraph number in this article; in this particular case, Article 2, paragraph 2, of the Convention.

<sup>6</sup> They may also need to reflect, as appropriate, the provisions of the Aarhus Convention for Parties having also ratified that Convention; and the EU EIA Directive (Directive 85/337/EEC, as amended by Directive 97/11/EC and by Directive 2003/35/EC) for Member States of the EU.

<sup>7</sup> Consultation as defined by the United Kingdom High Court.

<sup>8</sup> EU Member States do not need to apply Directive 2003/35/EC until June 2005.

<sup>9</sup> All concerned Parties are effectively both the Party of origin and the affected Party.

<sup>10</sup> This cost included the cost of public participation in the second project, the South Caucasus Pipeline (gas pipeline), which was planned in the same pipeline route.

<sup>11</sup> See the document “Bilateral and multilateral cooperation in the framework of the Convention on environmental impact assessment in a transboundary context”, approved by the second meeting of the Parties as decision II/1 (ECE/MP.EIA/4), or the section 3.2 of this guidance.

<sup>12</sup> All concerned Parties are the Party of origin and the affected Party.

<sup>13</sup> For the public of the Party of origin.

<sup>14</sup> Time limit is interpreted in a flexible way; all comments were taken into account if they were submitted before final decision.

<sup>15</sup> Order of the Russian Federation Ministry of Nature Resources of 01.08.2003 No 683 “On dissemination information about carrying out state environmental review”. The State environmental review included quality control of all EIA documentation.

## **Appendix 2**

### **Convention on Environmental Impact Assessment in a Transboundary Context done at Espoo (Finland), on 25 February 1991**

Only those provisions of the Convention dealing with public participation are set out below.

The complete text of the Convention is available at <http://www.unece.org/env/eia/>.

#### Article 1: DEFINITIONS

For the purposes of this Convention,

(x) “The Public” means one or more natural or legal persons [and, in accordance with national legislation or practice, their associations, organizations or groups].<sup>\*/</sup>

#### Article 2: GENERAL PROVISIONS

2. Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in Appendix I that are likely to cause significant adverse transboundary impact, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Appendix II.

6. The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.

#### Article 3: NOTIFICATION

1. For a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under Article 5, notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity.

8. The concerned Parties shall ensure that the public of the affected Party in the areas likely to be affected be informed of, and be provided with possibilities for making comments or objections on, the proposed activity, and for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin.

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<sup>\*/</sup> Amendments to the Convention which are in square brackets [...] were adopted at the second meeting of the Parties to the Convention (decision II/14), but are not yet in force.



#### Article 4: PREPARATION OF THE ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENTATION

2. The Party of origin shall furnish the affected Party, as appropriate through a joint body where one exists, with the environmental impact assessment documentation. The concerned Parties shall arrange for distribution of the documentation to the authorities and the public of the affected Party in the areas likely to be affected and for the submission of comments to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin within a reasonable time before the final decision is taken on the proposed activity.

#### Article 6: FINAL DECISION

1. The Parties shall ensure that, in the final decision on the proposed activity, due account is taken of the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments thereon received pursuant to Article 3 paragraph 8 and Article 4, paragraph 2, and the outcome of the consultations as referred to in Article 5.

**Appendix 3****Case studies, presented by experts - members of UNECE Task Force on public participation in environmental impact assessment in a transboundary context****Contents**

<b>Ref.</b>	<b>Title</b>	<b>Presented by</b>
1	Oil pipeline Baku-Tbilisi-Ceyhan (BTC)	Tatyana Javanshir (Azerbaijan) and Gia Zhorzholiani (Georgia)
2	Bridge over Danube river	Daniela Pineta (Romania) and Jacqueline Metodieva and Katya Peicheva (Bulgaria)
3	Multipurpose hydropower system on the river Drava	Fóris Edina (Hungary) and Nenad Mikulic (Croatia)
4	Renovation project of the Narva power plant	Veronika Versh (Estonia)
5	Nuclear power plant (Loviisa-3)	Nikolay Grishin and Sergey Tveritinov (Russia) and Ulla-Riitta Soveri (Finland)
6	Flood prevention	Leena Ivalo (Finland)
7	Power line from Muhos to Torneå in 2000 –2001	Leena Ivalo (Finland)
8	The under-sea pipeline for hydrocarbon transfer	Federica Rolle and Carmela Bilanzzone (Italy) and Nenad Mikulic (Croatia)
9	Kyrgyz-Chinese paper mill	Gulfia Shabaeva and Tatyana Filkova (Kyrgyzstan)
10	Dredging for aggregates in the English Channel/La Manche	Jim Burns and Roger Gebbels (United Kingdom) and Georges Guignabel (France)

Appendix 3. Case study 1	
<b>1.Information about the project (title, activity; stage of EIA procedure):</b> <b>Oil pipeline Baku-Tbilisi-Ceyhan (BTC)</b> EIA procedure from its beginning	
<b>2.1.Party of origin (PO): was PO a Party of the Convention during the EIA procedure (YES/NO):</b> Azerbaijan (YES); Georgia (NO) <sup>1</sup>	<b>2.2.Affected Party (AP): was AP a Party of the Convention during the EIA procedure (YES/NO):</b> Azerbaijan (YES); Georgia (NO) <sup>1</sup>
<b>3.Special agreement between Parties about transboundary EIA and/or Joint body:</b> A special Agreement was ratified by Parliaments of all three countries	
<b>4.Proponent (title (if possible); public/private):</b> States and private companies; "British Petroleum" (BP) – main proponent and operator of the project	
<b>5. Notification of public of PO – according to national legislation (Yes/No): YES</b>	
<b>6. Notification of public of AP:</b> <b>6.1.In what stage:</b> From very beginning of the process <b>6.2.Who informed public:</b> Main proponent (item 4) had a special division and invited a special firm to work with public in areas around the pipeline route <b>6.3.Methods used for public notification:</b> Advertisements in local, regional and national newsletters; informing by post, TV and radio; posters along the pipeline route; organising public hearings and meetings with proponent; publishing and dissemination booklets with EIA information; EIA documentation was available in the offices of proponent and points of contact and in the web-site of the project <b>6.4.Number of sets of EIA information transmitted to public of AP:</b> Proponent organised about 30 points of contact with public in AP, where EIA information was available; a lot of booklets were sent to public	
<b>7.Translation of EIA documentation for public of AP (Yes/No): Yes</b> <b>7.1.All EIA documentation / summary:</b> All EIA Documentation and summary (as booklets) <b>7.2.Translation was undertaken by:</b> Main proponent (item 4) <b>7.3.Payment was covered by:</b> Main proponent (item 4)	
<b>8.Time limits established for receiving comments or objections(c/o) from public:</b> The main proponent of the project established the equivalent time limits (60-day period of public discussion of the project before the permitting procedure and then 45-90 days during that procedure) for the public of all Parties concerned in Azerbaijan and Georgia according to an Agreement between the Parties	
<b>9.Collecting the comments or objections(c/o) of public of AP:</b> <b>9.1.Who collected c/o:</b> Main proponent (item 4) <b>9.2.Methods used for collecting c/o:</b> Reports of public hearings and consultations <b>9.3.Number of received c/o of public of AP:</b> About 3,000 comments and questions were received by proponent from public of AP.	
<b>10.Cost of public participation (total sum; who cover this cost):</b> Total sum of organising public participation in impact assessment procedure through the Public Disclosure mechanism coasted about USD 1,500,000. This cost included public participation in the second project – South Caucasus Pipeline (gas pipeline) which was planned in the same pipeline route, as BTC. The cost was covered by main proponent (item 4).	
<b>11.Transmission of c/o of public of AP to the competent authority (CA) of PO:</b> <b>11.1.Who sent c/o of public of AP to the CA of PO:</b> Main proponent (item 4), responsible for carrying out EIA, included public opinion into EIA documentation that was presented to CA of AP and PO. <b>11.2.Who made translation of these c/o:</b> Main proponent (item 4). <b>11.3.Did CA of AP receive c/o of public of AP which were sent to the CA of PO:</b> yes	
<b>12.Taking into account in final decision outcome of EIA, including public comments or objections on the proposed activity and public comments on EIA documentation:</b> Public was informed about this by proponent and CA of AP.	
<b>13.Difficulties encountered:</b> Main problem was to prove safety of the project.	
<b>14.Case study was presented by:</b> Azerbaijan and Georgia.	

<b>1. Information about the project (title, activity; stage of EIA procedure):</b> <b>Bridge over Danube river</b> , between cities Vidin (Bulgaria) and Calafat (Romania) The project stage is feasibility study with preliminary EIA	
<b>2.1. Party of origin (PO): was PO a Party of the Convention during the EIA procedure (YES/NO):</b> Bulgaria (YES); Romania (YES) <sup>2</sup>	<b>2.2. Affected Party (AP): was AP a Party of the Convention during the EIA procedure (YES/NO):</b> Bulgaria (YES); Romania (YES) <sup>2</sup>
<b>3. Special agreement between Parties about transboundary EIA and/or Joint body:</b> Agreement between the Governments of Bulgaria and Romania for construction of the bridge including obligations on joint EIA. According to this Agreement Joint Working Group (JWG) on the environmental problems was established to co-ordinate the environmental procedures. The Project Implementation and Management Units (PIMU) were established in the structures of the competent authorities of both Parties	
<b>4. Proponent (title (if possible); public/private):</b> The Ministry of Transport and Communications of Bulgaria	
<b>5. Notification of public of PO – according to national legislation (Yes/No):</b> Yes	
<b>6. Notification of public of AP:</b> <b>6.1. What stage:</b> From very beginning of the process <b>6.2. Who informed public:</b> Competent authority of each party informed its own public <b>6.3. Methods used for public notification:</b> Through notification of the authorities of the AP; announcements in the local and national (Bulgaria) newspapers, local radio and TV (Bulgaria); notification of local (Rom.) and national (Bulgaria) NGOs by post; notification of concerned national, district and local authorities by post (Bulgaria); meetings with competent authorities and proponent of activity <b>6.4. Number of sets of EIA information transmitted to public of AP:</b> Romania has received 2 sets of EIA documentation in Romanian and in English, Bulgarian Ministry received 5 copies of the EIA report in Bulgarian and 1 copy in English and the municipality of Vidin receive 1 copy in Bulgarian. The documentation was available to the interested physical persons, representatives of NGO's and other interested parties	
<b>7. Translation of EIA documentation for public of AP (Yes/No):</b> Yes <b>7.1. Full EIA documentation / summary:</b> Full EIA Documentation was translated by PIMU (item 3) – 20 copies in Bulgarian, English and Romanian <b>7.2. Translation was undertaken by:</b> PIMU in both countries (item 3) <b>7.3. Payment was covered by:</b> PIMU in both countries (item 3)	
<b>8. Time limits established for receiving comments or objections(c/o) from public:</b> 1 month. The JWG (see item 3) has discussed and determined this time limit for receiving the written opinions of the public and other concerned parties in both countries <sup>2</sup>	
<b>9. Collecting the comments or objections (c/o) of public of AP:</b> <b>9.1. Who collected c/o:</b> The comments were written by the EPA (CA) in Romania, during the public hearing, translated in English and submitted to the MoEW (CA) in Bulgaria. <b>9.2. Methods used for collecting c/o:</b> Written comments from the public (Bulgaria); reports of consultations with public and public hearings <b>9.3. Number of received c/o of public of AP:</b> 10 (Romania), 7 (Bulgaria) – during the two public hearings, one in Calafat and the other in Vidin	
<b>10. Cost of public participation (total sum; who cover this cost):</b> Each participant from relevant authorities in both countries, from NGO's and from the concerned public has paid the costs for the participation in the hearings himself. The translation of the documentation was organized by PIMU (item 3) and the local municipalities covered the costs of the organization and translation into Romanian/Bulgarian on the public hearings	
<b>11. Transmission of c/o of public of AP to the competent authority (CA) of PO:</b> <b>11.1. Who sent c/o of public of AP to the CA of PO:</b> PIMU (item 3) <b>11.2. Who made translation of these c/o:</b> PIMU (item 3) <b>11.3. Did CA of AP receive c/o of public of AP which were sent to the CA of PO:</b> Yes, the minutes of the public hearing was transmitted from one Party to another one	
<b>12. Taking into account in final decision outcome of EIA, including public comments or objections on the proposed activity and public comments on EIA documentation:</b> Bulgarian Ministry of Environment and Water has reflected in the decision on the preliminary EIA the results of public consultations. The information on the EIA decision was published in the national Bulgarian newspaper; the copies were given to the proponent (Ministry of Transport and Communications of Bulgaria), to local municipality and to concerned authorities. The decision was translated in English and was sent to the Romanian party through PIMU (item 3)	
<b>13. Difficulties encountered:</b> The difficulties were encountered because the EIA Directive is not precise regarding the exact moment of the issuance of final decision for a project, when we have to take into account the project design	
<b>14. Case study was presented by:</b> Bulgaria and Romania	

## Appendix 3. Case study 3.

<b>1.Information about the project (title, activity; stage of EIA procedure):</b> <b>Multipurpose hydropower system on the River Drava</b> After finishing review of EIA documentation in Croatia, but before final decision	
<b>2.1.Party of origin (PO): was PO a Party of the Convention during the EIA procedure (YES/NO):</b> Croatia (YES)	<b>2.2.Affected Party (AP): was AP a Party of the Convention during the EIA procedure (YES/NO):</b> Hungary (YES)
<b>3.Special agreement between Parties about transboundary EIA and/or Joint body: No</b>	
<b>4.Proponent (title (if possible); public/private):</b> Croatian Power Board	
<b>5. Notification of public of PO – according to national legislation (Yes/No):</b> Yes	
<b>6. Notification of public of AP:</b> <b>6.1.In what stage:</b> After finishing review of EIA documentation in Croatia, but before final decision <b>6.2.Who informed public:</b> Competent authority (CA) of AP <b>6.3.Methods used for public notification:</b> Notification through local governments + directly the likely affected public. CA of AP prepared and issued booklets that were sent to every household within 1.5 km of the affected area of the River Drava. Local governments nearby also received it. All information was put on the web-site of CA of AP <b>6.4.Number of sets of EIA information transmitted to public of AP:</b> 4,000 booklets were sent to the public (inc. local authorities and the NGOs) by CA of AP after the notification (2001) and later – also before the public hearing (2003)	
<b>7.Translation of EIA documentation for public of AP (Yes/No):</b> Yes <b>7.1.All EIA documentation / summary:</b> The summary of the environmental impact study (sent in English) and relevant parts from the whole documentation concerning the transboundary impacts and the statement of the Croatian EIA Committee (sent in Croatian) <b>7.2.Translation was undertaken by:</b> CA (Ministry of Environment and Water) of AP <b>7.3.Payment was covered by:</b> CA (Ministry of Environment and Water) of AP	
<b>8.Time limits established for receiving comments or objections (c/o) from public:</b> <b>8.1.Established for public of PO by PO:</b> In Croatia public was involved in EIA public hearing (30 days). No time limit was set for public of AP <b>8.2.Established for public of AP by (PO/AP/Agreement):</b> Time limit for public of AP was established by CA of AP: 30 +30 days in the first phase and a public hearing was organised with the participation of Croatian delegates by the CA of AP in the second phase	
<b>9.Collecting the comments or objections (c/o) of public of Affected Party (AP):</b> <b>9.1.Who collected c/o:</b> Competent authority (Ministry of Environment and Water) of AP <b>9.2.Methods used for collecting c/o:</b> Through the questionnaire attached to the first booklet (4000 copies), through a free phone line of the CA of AP and later a public hearing was organised <b>9.3.Number of received c/o of public of AP:</b> About 25 written comments; oral comments at the public hearing	
<b>10.Cost of public participation (total sum; who cover this cost):</b> Preparing, printing and distributing booklets in the AP were about EUR 6,000; organising of public hearing (inc. leaflets, transport for interested audience, interpreter) about EUR 10 000. All costs were covered by CA of AP	
<b>11.Transmission of c/o of public of AP to the competent authority (CA) of PO:</b> <b>11.1.Who sent c/o of public of AP to the CA of PO:</b> CA of PO received comments at the public hearing <b>11.2.Who made translation of these c/o:</b> Concerned Parties at the public hearing (2 interpreters) <b>11.3.Did CA of AP receive c/o of public of AP which were sent to the CA of PO:</b> Written comments were gathered to establish the standpoint of AP. The PO took part on the public hearing	
<b>12.Taking into account in final decision outcome of EIA, including public comments or objections on the proposed activity and public comments on EIA documentation:</b> There is no final decision yet	
<b>13. Difficulties encountered:</b> <i>From the point of view of the AP</i> , the information obtained from the PO was not sufficient and satisfactory, and it was very difficult to find information about the likely impacts on the territory of the AP and its reasons in the more than 10 000 pages documentation of PO. Later, upon request of AP, a Supplementary material was prepared (about 300 pages in English). The last study was sent to the AP in April 2003. Very difficult to keep the interest of public during such a long process (the process started in February 2001). The affected public did not show enough interest in answering the questions and sending their remarks in written form. In PO the whole procedure of decision-making has been conducted more than 10 years. And as far as the EIA is administrative procedure, PO has not released the final decision, waiting for the Espoo procedure to be completed. <i>From the point of view of the PO</i> the reasons presented by the AP for preparation of the supplementary material were accepted. In February 2002, PO proposed the 'Work continuation proposal' and an expert meeting aimed at efficient implementation of the Espoo Convention procedures, and to agree the area of the supplementary investigations as well as to set up the criteria for the 'significant impact' on the territory of the AP. The AP rejected the Work continuation proposal and declined proposal for the expert meeting. The PO met all the requests posed by the AP during the EIA procedure	

<b>14. Case study was presented by:</b> Hungary and Croatia
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Appendix 3. Case study 4.	
<b>1. Information about the project (title, activity; stage of EIA procedure):</b>	
<p style="text-align: center;"><b>Renovation project of the Narva Power Plant</b></p> <p style="text-align: center;">The project was started during the EIA procedure</p>	
<b>2.1. Party of origin (PO): was PO a Party of the Convention during the EIA procedure (YES/NO):</b> Estonia (YES)	<b>2.2. Affected Party (AP): was AP a Party of the Convention during the EIA procedure (YES/NO):</b> Russian Federation (NO); Finland (YES)
<b>3. Special agreement between Parties about transboundary EIA and/or Joint body:</b> With Finland: bilateral agreement; with Russian Federation: no	
<b>4. Proponent (title (if possible); public/private):</b> Narva Power Plants, Estonian Energy Ltd. (partly private / partly owned by Estonian Ministry of Economy and Communication)	
<b>5. Notification of public of PO – according to national legislation (Yes/No):</b> yes.	
<b>6. Notification of public of AP:</b> There was no public participation in AP (Finland); AP only asked opinions of experts, environmental authorities and NGOs of AP	
<b>6.1. In what stage:</b> When drafting the EIA programme (scoping) and for draft EIA statement	
<b>6.2. Who informed public:</b> Competent authority (point of contact regarding notification (POC) – Finnish Ministry of Environment (MoE)) of the AP	
<b>6.3. Methods used for public notification:</b> Through notification of the competent authority (POC) of the AP	
<b>6.4. Number of sets of EIA information transmitted to public of AP:</b> Finnish MoE (POC) sent a copy of draft EIA documentation to experts, environmental authorities and NGOs of AP	
<b>7. Translation of EIA documentation for public of AP (Yes/No):</b> Yes (into English), but translation was sent only to experts, environmental authorities and NGOs of AP by POC (MoE) of AP	
<b>7.1. All EIA documentation / summary:</b> Draft EIA programme and summary of EIA statement.	
<b>7.2. Translation was undertaken by:</b> Proponent of proposed activity	
<b>7.3. Payment was covered by:</b> Proponent of proposed activity	
<b>8. Time limits established for receiving comments or objections (c/o) from public:</b>	
<b>8.1. Established for public of PO by PO:</b> 2 weeks for draft EIA programme; 3 weeks for draft EIA statement	
<b>8.2. Established for public of AP by (PO/AP/Agreement):</b> 1 month, established by competent authority (Estonian MoE (POC)) of PO and proponent	
<b>9. Collecting the comments or objections (c/o) of public of AP:</b>	
<b>9.1. Who collected c/o:</b> Competent authority (POC) of AP	
<b>9.2. Methods used for collecting c/o:</b> Comments of competent authority (POC) of AP were received	
<b>9.3. Number of received c/o of public of AP:</b> PO (Estonian MoE) received only a summary of comments from experts, environmental authorities and NGOs of AP, prepared and sent by competent authority (POC) of AP	
<b>10. Cost of public participation (total sum; who cover this cost):</b> In PO – EUR 13 (2 advertisements in a national newspaper); proponent	
<b>11. Transmission of c/o of public of AP to the competent authority (CA) of PO:</b>	
<b>11.1. Who sent c/o of public of AP to the CA of PO:</b> CA (POC) of AP (a summary of comments from experts, environmental authorities and NGOs of AP)	
<b>11.2. Who made translation of these c/o:</b> CA (POC) of AP	
<b>11.3. Did CA of AP receive c/o of public of AP which were sent to the CA of PO:</b> Yes	
<b>12. Taking into account in final decision outcome of EIA, including public comments or objections on the proposed activity and public comments on EIA documentation:</b> CA (POC) of AP informed public of the AP about the final decision	
<b>13. Difficulties encountered:</b> Time limits and translations	
<b>14. Case study was presented by:</b> Estonia	

<b>1.Information about the project (title, activity; stage of EIA procedure):</b> <p style="text-align: center;"><b>Nuclear Power Plant (“Loviisa-3”)</b></p> <p style="text-align: center;">EIA Programme + EIA Report</p>	
<b>2.1.Party of origin (PO): was PO a Party of the Convention during the EIA procedure (YES/NO):</b> <p style="text-align: center;">Finland (YES)</p>	<b>2.2.Affected Party (AP): was AP a Party of the Convention during the EIA procedure (YES/NO):</b> <p style="text-align: center;">Russian Federation (NO)</p>
<b>3.Special agreement between Parties about transboundary EIA and/or Joint body: no</b>	
<b>4.Proponent (title (if possible); public/private):</b> Fortum Power and Heat Oy (private)	
<b>5. Notification of public of PO – according to national legislation (Yes/No):</b> yes	
<b>6. Notification of public of AP:</b> <p><b>6.1.In what stage:</b> From very beginning of both procedures (EIA Programme and EIA report)</p> <p><b>6.2.Who informed public:</b> Competent authority of AP through NGO, which was asked by competent authority of AP to be responsible for organising the Russian public involvement in the transboundary EIA procedure</p> <p><b>6.3.Methods used for public notification:</b> NGO in AP, responsible for organising public participation in EIA (item 6.2), carried out the following steps: a) informed public of AP about possibility to participate in EIA procedure through NGOs networks (SEU and IPNEIA); b) determined number of NGOs and independent experts interested in participation in EIA; c) received from proponent relevant number of EIA booklets and sent these booklets to interested public</p> <p><b>6.4.Number of sets of EIA information transmitted to public of AP:</b> about 100</p>	
<b>7.Translation of EIA documentation for public of AP (Yes/No):</b> Yes <p><b>7.1.All EIA documentation / summary:</b> Summary as booklet</p> <p><b>7.2.Translation was undertaken by:</b> Proponent</p> <p><b>7.3.Payment was covered by:</b> Proponent</p>	
<b>8.Time limits established for receiving comments or objections (c/o) from public:</b> <p><b>8.1.Established for public of PO by PO:</b> The time limit was based on the national EIA legislation of PO, and it was 60 days – for EIA programme and for EIA report</p> <p><b>8.2.Established for public of AP by (PO/AP/Agreement):</b> The same time limit (60 days) was given by point of contact regarding notification (POC) of PO to the authorities (POC) in the AP to transmit the AP’s statement and comments</p>	
<b>9.Collecting the comments or objections (c/o) of public of AP:</b> <p><b>9.1.Who collected c/o:</b> NGO in AP, responsible for organising public participation in EIA (item 6.2)</p> <p><b>9.2.Methods used for collecting c/o:</b> Comments to EIA booklets (which were sent by post to interested NGOs and independent experts) were collected by e-mail.</p> <p><b>9.3.Number of received c/o of public of AP:</b> 10 - in stage of EIA programme; 8 – in stage of EIA report</p>	
<b>10.Cost of public participation (total sum; who cover this cost):</b> Cost of translation and publishing EIA material (booklets) into Russian was about EUR 1,500 (covered by proponent in PO); NGOs in the AP worked for their own money (cost for dissemination of information in AP and collecting public comments and obligation may be estimated about EUR 500)	
<b>11.Transmission of c/o of public of AP to the competent authority (CA) of PO:</b> <p><b>11.1.Who sent c/o of public of AP to the CA of PO:</b> CA and public of AP (summary)</p> <p><b>11.2.Who made translation of these c/o:</b> PO</p> <p><b>11.3.Did CA of AP receive c/o of public of AP which were sent to the CA of PO:</b> Yes.</p>	
<b>12.Taking into account in final decision outcome of EIA, including public comments or objections on the proposed activity and public comments on EIA documentation:</b> Public of AP was not officially informed about this	
<b>13.Difficulties encountered:</b> -	
<b>14.Case study was presented by:</b> Finland and Russian Federation	

Appendix 3. Case study 6	
<b>1.Information about the project (title, activity; stage of EIA procedure):</b> <b>Flood prevention (by dredging as the main alternative).</b> The proponent had already applied for a permit for dredging	
<b>2.1.Party of origin (PO): was PO a Party of the Convention during the EIA procedure (YES/NO):</b> Finland (YES)	<b>2.2.Affected Party (AP): was AP a Party of the Convention during the EIA procedure (YES/NO):</b> Sweden (YES)
<b>3.Special agreement between Parties about transboundary EIA and/or Joint body: Finland and Sweden do have a bilateral agreement concerning the frontier river Tornio; in accordance with this agreement, the Finnish-Swedish Commission is the competent authority responsible for granting permits for activities and projects e.g. flood prevention. The flood prevention project was planned in co-operation with the Swedish authorities</b>	
<b>4.Proponent (title (if possible); public/private):</b> Lapland Regional Environment Centre (public)	
<b>5.Notification of public of PO – according to national legislation (Yes/No):</b> yes	
<b>6. Notification of public of AP:</b> <b>6.1.In what stage:</b> Public was informed about the assessment programme (scoping) and the EIA report at the same time as the public of the PO <b>6.2.Who informed public:</b> The EIA co-ordination authority of the PO <b>6.3.Methods used for public notification:</b> The co-ordination authority sent the announcements concerning the EIA procedure for posting on the official notice board in the Haaparanta municipality in Sweden; the same public announcement was sent to local and regional newspapers (3); public in the AP had access to the full EIA documentation in the public library and in the office building of the Haaparanta municipality. Point of contact of PO sent a notification to point of contact of AP, which notified authorities of the AP (a notification and a scoping were integrated) <b>6.4.Number of sets of EIA information transmitted to public of AP:</b> 1 to the main library, 1 to the municipal authority; about 6-8 to point of contact of AP	
<b>7.Translation of EIA documentation for public of AP (Yes/No):</b> Yes <b>7.1.Full EIA documentation / summary:</b> Full EIA documentation <b>7.2.Translation was undertaken by:</b> EIA co-ordination authorities of the PO translated its own comments <b>7.3.Payment was covered by:</b> Proponent - in accordance with the Finnish EIA law	
<b>8.Time limits established for receiving comments or objections (c/o) from public:</b> <b>8.1.Established for public of PO by PO:</b> 4 weeks - for EIA programme, 7 weeks - for EIA report + 6-week extension <b>8.2.Established for public of AP by (PO/AP/Agreement):</b> 4 weeks - for EIA programme, 7 weeks - for EIA report + 6-week extension were established by the co-ordination authority of the PO.	
<b>9.Collecting the comments or objections (c/o) of public of AP:</b> <b>9.1.Who collected c/o:</b> Authorities of AP: comments were received through the Swedish point of contact regarding notification (POC) which sent comments of AP to the Finnish (POC), and public was given possibility to sent comments through Haaparanta municipality (local authority in Sweden) <b>9.2.Methods used for collecting c/o:</b> Written comments from the public; public from AP was invited to participate in the public hearings in PO <b>9.3.Number of received c/o of public of AP:</b> 8 comments on programme and 6 comments on report	
<b>10.Cost of public participation (total sum; who cover this cost):</b> In accordance with the Finnish EIA law the proponent pays the cost of an EIA procedure	
<b>11.Transmission of c/o of public of AP to the competent authority (CA) of PO:</b> <b>11.1.Who sent c/o of public of AP to the CA of PO:</b> Comments were received from local, regional and state authorities of AP through the Swedish point of contact and the Finnish point of contact. One comment from public was sent to the proponent, and was forwarded to the EIA co-ordination authority <b>11.2.Who made translation of these c/o:</b> Swedish is the other official language in Finland, hence Swedish comments did not need to be translated. Swedish was used in all correspondence between the countries <b>11.3.Did CA of AP receive c/o of public of AP which were sent to the CA of PO:</b>	
<b>12.Taking into account in final decision outcome of EIA, including public comments or objections on the proposed activity and public comments on EIA documentation:</b> The final decision is given pursuant to the Environmental Protection Act, which stipulates the announcement of the final decision. The competent authority that grants the permit will announce the final decision. The competent authority will send the final decision to the point of contact of Finland, who will send it to the POC of Sweden	
<b>13.Difficulties encountered:</b> -	
<b>14.Case study was presented by:</b> Finland	



Appendix 3. Case study 7.	
<b>1.Information about the project (title, activity; stage of EIA procedure):</b> <b>Power line from Muhos to Torneå in 2000 –2001</b> <b>on the Finnish side of the border</b> No decision has yet been made on a route; and real alternatives were assessed	
<b>2.1.Party of origin (PO): was PO a Party of the Convention during the EIA procedure (YES/NO):</b> Finland (YES)	<b>2.2.Affected Party (AP): was AP a Party of the Convention during the EIA procedure (YES/NO):</b> Sweden (YES)
<b>3.Special agreement between Parties about transboundary EIA and/or Joint body:</b> Not under the Espoo Convention	
<b>4.Proponent (title (if possible); public/private):</b> Finnish Power Company, Fingrid Oyj (private)	
<b>5.Notification of public of PO – according to national legislation (Yes/No):</b> yes	
<b>6.Notification of AP:</b> <b>6.1.In what stage:</b> Very close to start of the EIA procedure in the PO <b>6.2.Who informed public:</b> Competent authority of the AP <b>6.3.Methods used for public notification:</b> <b>Through notification of the authority (point of contact regarding notification (POC)) of the AP; information about the project was on the PO environmental administration's web site.</b> <b>6.4.Number of sets of EIA information transmitted to public of AP:</b> -	
<b>7.Translation of EIA documentation for public of AP (Yes/No):</b> Yes <b>7.1.Full EIA documentation / summary:</b> Summary (a separate 4-page brochure of the assessment programme and an 8-page summary of the assessment report) <b>7.2.Translation was undertaken by:</b> Proponent of proposed activity <b>7.3.Payment was covered by:</b> Proponent - in accordance with the Finnish EIA law	
<b>8.Time limits established for receiving comments or objections (c/o) from public:</b> <b>8.1.Established for public of PO by PO:</b> 6 weeks - for the EIA programme; 4 weeks – for the new alternative; 7 weeks - for the EIA report <b>8.2.Established for public of AP by (PO/AP/Agreement):</b> 6 weeks - for the EIA programme, 4 weeks - for the new alternative; 7 – weeks for the EIA report	
<b>9.Collecting the comments or objections (c/o) of public of AP:</b> <b>9.1.Who collected c/o:</b> Authorities of AP; comments were received through the Swedish POC <b>9.2.Methods used for collecting c/o:</b> <b>9.3.Number of received c/o of public of AP:</b> The Swedish (AP) POC sent comments from the Swedish Power Company (authority and owner of the power network as well) and the City of Haaparanta; 2 concerning the assessment programme and 2 concerning the assessment report	
<b>10.Cost of public participation (total sum; who cover this cost):</b> About EUR 8,000-10,000. In accordance with the Finnish EIA Law, a proponent pays the cost of an EIA procedure	
<b>11.Transmission of c/o of public of AP to the competent authority (CA) of PO:</b> <b>11.1.Who sent c/o of public of AP to the CA of PO:</b> Comments were received from local, regional and state authorities of AP through the Swedish POC and the Finnish POC <b>11.2.Who made translation of these c/o:</b> Swedish is the other official language in Finland, hence Swedish comments did not need to be translated. Swedish was used in all correspondence between the countries. <b>11.3.Did CA of AP receive c/o of public of AP which were sent to the CA of PO:</b>	
<b>12.Taking into account in final decision outcome of EIA, including public comments or objections on the proposed activity and public comments on EIA documentation:</b> The final decision has not yet been given; in accordance with the national EIA law, the co-ordination authority must take into account views expressed by the public when giving its comments on the assessment programme and report. The competent authority will send the final decision to the POC of Finland, who will send it to the POC of Sweden	
<b>13.Difficulties encountered:</b> -	
<b>14.Case study was presented by:</b> Finland	

Appendix 3. Case study 8.	
<b>1.Information about the project (title, activity; stage of EIA procedure):</b> <b>The under-sea pipeline for hydrocarbon transfer</b> (Joint project concerns methane pipeline) Assessment of a definitive project (EIA procedure)	
<b>2.1.Party of origin (PO) <sup>3</sup>: was PO a Party of the Convention during the EIA procedure (YES/NO):</b> Italy (YES) and Croatia (YES)	<b>2.2.Affected Party (AP) <sup>3</sup>: was AP a Party of the Convention during the EIA procedure (YES/NO):</b> Italy (YES) and Croatia (YES)
<b>3.Special agreement between Parties about transboundary EIA and/or Joint body:</b> Bilateral agreement (since 1998), it has been decided to establish a Joint Body representing the 2 governments	
<b>4.Proponent (title (if possible); public/private):</b> a joint Italian/Croatian company (private).	
<b>5.Notification of public of PO – according to national legislation (Yes/No):</b> yes	
<b>6.Notification of public of AP:</b> 6.1.In what stage: <b>Italian and Croatian public has been informed, in accordance with the European EIA Directive, i.e. at the very early stage of the procedure. Each Party has informed its own public according to its national rules</b> 6.2. <b>Who informed public:</b> According to legislation of both countries the proponent has the obligation to inform the public authorities and the public of its own country 6.3. <b>Methods used for public notification:</b> In Croatia and in Italy, an advice, providing general information on the proposed activity and indicating where and for how long the relevant documentation was available, as well as the practicalities regarding public participation, has been published both on a national and on a local newspaper. In Croatia there was a public hearing (2 weeks) in County's office in Rijeka 6.4. <b>Number of sets of EIA information transmitted to public of AP:</b> The documentation has been made available in the harbour-office of Ravenna (Italy) and in the Primorsko-Goranska county's office in Rijeka (Croatia) according to national regulation of concerned Parties. Public of each Parties had access to detailed EIA information about impact on territory of their own country and to summary of EIA information about other Party. Furthermore, also a non-technical summary of the EIA documentation has been made available. A summary of the EIA documentation concerning the impact on the Italian/Croatian area has been sent by the proponent to Croatian/Italian authorities in order to make it available to the public and vice versa	
<b>7.Translation of EIA documentation for public of AP (Yes/No):</b> Yes 7.1. <b>All EIA documentation / summary:</b> All EIA documentation produced by proponent in both languages 7.2. <b>Translation was undertaken by:</b> The proponent (a joint Italian/Croatian company) 7.3. <b>Payment was covered by:</b> The proponent (a joint Italian/Croatian company)	
<b>8.Time limits established for receiving comments or objections (c/o) from public:</b> 30 days in both countries according to national legislation, but it is interpreted in a flexible way; all comments were taken account on if there were submitted before final decision	
<b>9.Collecting the comments or objections (c/o) of public of affected Party</b> 9.1. <b>Who collected c/o:</b> CA of each Parties (PO = AP) <sup>3</sup> 9.2. <b>Methods used for collecting c/o:</b> Written comments from the public 9.3. <b>Number of received c/o of public of AP:</b> Each Party received comments only from its own public, i.e. public of PO <sup>3</sup>	
<b>10.Cost of public participation (total sum; who cover this cost):</b> The costs of publishing the advice on the newspapers and the costs of preparing and copying the EIA documentation, as well as the translation of the summary, have been covered by the proponent (a joint Italian/Croatian company); in Italy this cost (notifying the public through an advice on 2 newspapers (a local and a national one)) was around EUR 5,000.	
<b>11.Transmission of c/o of public of AP to the competent authority (CA) of PO:</b> 11.1. <b>Who sent c/o of public of AP to the CA of PO:</b> See item 9.3; the 2 contact points in principles are in charge of exchanging public's observations in Italy. 11.2. <b>Who made translation of these c/o:</b> See item 9.3. This issue is not regulated by the agreement undertaken between Parties. 11.3. <b>Did CA of AP receive c/o of public of AP which were sent to the CA of PO:</b>	
<b>12.Taking into account in final decision outcome of EIA, including public comments or objections on the proposed activity and public comments on EIA documentation:</b> According to national law the proponent has the obligation to make publicly available the decision (in both countries)	
<b>13.Difficulties encountered:</b>	
<b>14.Case study was presented by:</b> Italy and Croatia	

Appendix 3. Case study 9.	
<b>1.Information about the project (title, activity; stage of EIA procedure):</b> <b>Kyrgyz-Chinese paper mill.</b> stage of selection of place (location) and stage of planning	
<b>2.1.Party of origin (PO): was PO a Party of the Convention during the EIA procedure (YES/NO):</b> Kyrgyzstan – NO <sup>4</sup>	<b>2.2.Affected Party (AP): was AP a Party of the Convention during the EIA procedure (YES/NO):</b> Kazakhstan – NO <sup>4</sup>
<b>3.Special agreement between Parties about transboundary EIA and/or Joint body:</b> Three-power (Kyrgyzstan, Kazakhstan, Uzbekistan) treaty on environmental protection including obligation for carrying out joint state environmental expertise (review) for projects with transboundary effects	
<b>4.Proponent (title (if possible); public/private):</b> China Company “Complant” and Ministry of Foreign Trade and Industry of Kyrgyzstan	
<b>5.Notification of public of PO – according to national legislation (Yes/No): YES.</b>	
<b>6. Notification of public of AP:</b> <b>6.1.What stage:</b> Stage of selection of place (location) and stage of planning <b>6.2.Who informed public:</b> One NGO from Kazakhstan and one NGO from Kyrgyzstan <b>6.3.Methods used for public notification:</b> NGOs e-mail bulletin; meeting (forum) of environmental NGOs of Kazakhstan <b>6.4.Number of sets of EIA information transmitted to public of AP:</b> e-mail bulletins were used for informing the public	
<b>7.Translation of EIA documentation for public of AP (Yes/No):</b> No translation needed: the common language of international intercourse (Russian) was used <b>7.1.All EIA documentation / summary:</b> <b>7.2.Translation was undertaken by:</b> <b>7.3.Payment was covered by:</b>	
<b>8.Time limits established for receiving comments or objections (c/o) from public:</b> <b>8.1.Established for public of PO by PO:</b> <b>8.2.Established for public of AP by (PO/AP/Agreement):</b>	
<b>9.Collecting the comments or objections (c/o) of public of affected Party</b> <b>9.1.Who collected c/o:</b> NGO. <b>9.2.Methods used for collecting c/o:</b> Written comments from the public <b>9.3.Number of received c/o of public of AP:</b> 58	
<b>10.Cost of public participation (total sum; who cover this cost):</b> About USD 2,000 in PO and about USD 500 in the AP; NGOs met this cost	
<b>11.Transmission of c/o of public of AP to the competent authority (CA) of PO:</b> <b>11.1.Who sent c/o of public of AP to the CA of PO:</b> NGO of the AP directly <b>11.2.Who made translation of these c/o:</b> No translation needs (item 7) <b>11.3.Did CA of AP receive c/o of public of AP which were sent to the CA of PO:</b> Yes	
<b>12.Taking into account in final decision outcome of EIA, including public comments or objections on the proposed activity and public comments on EIA documentation:</b> Public of the PO informed public of the AP about final decision	
<b>13. Difficulties encountered:</b> Documentation was presented in Chinese with poor translation into Russian; Chinese representatives did not understand request from officials and public and they did not want to contact with public and change documentation; political aspects of the project (it was signed by prime minister of Kyrgyzstan); all Parties concerned were not Parties to the Convention at the time of the project (1997)	
<b>14.Case study was presented by:</b> Kyrgyzstan	

Appendix 3. Case study 10.	
<b>1.Information about the project (title, activity; stage of EIA procedure):</b> <b>Dredging for aggregates in the English Channel/La Manche</b> (EIA procedure from its start).	
<b>2.1.Party of origin (PO): was PO a Party of the Convention during the EIA procedure (YES/NO):</b> United Kingdom (YES)	<b>2.2.Affected Party (AP): was AP a Party of the Convention during the EIA procedure (YES/NO):</b> Belgium (YES), Denmark (YES), France (YES), <sup>5</sup> Germany (YES), <sup>5</sup> Netherlands (YES)

<b>3.Special agreement between Parties about transboundary EIA and/or Joint body:</b> All of the concerned Parties are bound by the legal requirements of the EU EIA Directive (Directive 85/337/EEC, as amendment by Directive 97/11/EC). In the course of a discussion about proposed activity France proposed a bi-lateral agreement with United Kingdom dealing with dredging projects
<b>4.Proponent (title (if possible); public/private):</b> Volker Dredging Ltd., private
<b>5.Informing of public of PO – according to national legislation (Yes/No):</b> Yes
<b>6.Notification of public of AP:</b> <b>6.1.What stage:</b> From very beginning of the process <b>6.2.Who informed public:</b> Competent authority of PO informed competent authority of AP <b>6.3.Methods used for public notification:</b> Competent authority of AP were informed by post <b>6.4.Number of sets of EIA information transmitted to public of AP:</b> Three of the AP each received two sets of EIA documentation, each consisting of one copy of ES in English and another copy in their native language; the other AP each received one set of documentation; Belgium received copies in Dutch, French and English
<b>7.Translation of EIA documentation for public of AP (Yes/No):</b> yes <b>7.1.All EIA documentation / summary:</b> Full EIA documentation including a non-technical summary of EIA documentation were translated into Danish, French, German and Dutch <b>7.2.Translation was undertaken by:</b> Proponent <b>7.3.Payment was covered by:</b> Proponent
<b>8.Time limits established for receiving comments or objections (c/o) from public:</b> <b>8.1.Established for public of PO by PO:</b> 10 weeks for initial consultations, and then a further period 6 weeks to comment on the consultation summary and any supplement to the ES prepared in response to the consultations (time limit was established just for this type of marine dredging project) <b>8.2.Established for public of AP by (PO/AP/Agreement):</b> The same ones as in 8.1 (established by PO)
<b>9.Collecting the comments or objections (c/o) of public of AP:</b> <b>9.1.Who collected c/o:</b> Comments were received only from competent authority of APs <b>9.2.Methods used for collecting c/o:</b> Written responses from the CA of the APs were received by post <b>9.3.Number of received c/o of public of AP:</b> Comments were received only from the CA the Netherlands and French Governments. Belgium, Denmark and Germany indicated they did not wish to comment
<b>10.Cost of public participation (total sum; who cover this cost):</b> Total sum for translation and copying the EIA documentation was around £ 50,000; advertising in local newspapers costs about £ 5,000. The proponent agreed to meet these costs. CA of PO met the cost of advertising in the London Gazette (£ 200)
<b>11.Transmission of c/o of public of AP to the competent authority (CA) of PO:</b> <b>11.1.Who sent c/o of public of AP to the CA of PO:</b> Comments were received only from CA of APs <b>11.2.Who made translation of these c/o:</b> <b>11.3.Did CA of AP receive c/o of public of AP which were sent to the CA of PO:</b>
<b>12.Taking into account in final decision outcome of EIA, including public comments or objections on the proposed activity and public comments on EIA documentation:</b> A decision has not yet been taken on whether to give development consent for this proposed activity. The procedure followed, however, ensures that views expressed by the public are taken into account. The United Kingdom EIA legislation requires a CA to publish decisions and in doing so to state that in reaching a decision it has taken the environmental information into account. Environmental information includes representations made the public.
<b>13.Difficulties encountered:</b>
<b>14.Case study was presented by:</b> United Kingdom and France

<sup>1</sup> Each Party has controlled the part of the project falling under its territory. The operator of the project in territories of these both Parties was oil company “British Petroleum”, which carried out public participation according to joint rules.

<sup>2</sup> This is a case of joint EIA. Both Bulgaria and Romania are Party of origin and affected Party.

<sup>3</sup> The two Countries involved in the project are Italy and Croatia. As the activities that have been considered under the Convention are of a common nature, i.e. joint projects, it is not possible to define a Party of origin and an affected Party. Each Party has assessed the part of the project falling under its territory.

<sup>4</sup> Kyrgyzstan and Kazakhstan became Parties to the Convention after realisation of the project.

<sup>5</sup> At the time of initial contact in 2000, France and Germany had not ratified the Convention.

**Annex IX**

**DECISION III/9  
ADOPTION OF THE WORK PLAN  
UP TO THE FOURTH MEETING OF THE PARTIES**

**The Meeting,**

**Recalling** Article 11, paragraph 2 (f), of the Convention, stipulating that additional action that may be required to achieve the purposes of the Convention shall be undertaken,

**Recognizing** that it is essential for Parties to meet fully their legal obligations arising under the Convention,

**Recognizing also** that Parties should take action to maximize the effectiveness of their application of the Convention so that the best possible practical results are achieved,

1. **Adopts** the work plan for the period up to its fourth meeting, as appended to this decision, including activities to assist the Signatories to the Protocol on Strategic Environmental Assessment in preparing for its entry into force;

2. **Suggests** that lead countries that carry out the relevant activities should consult each other in order to benefit from each other's experience and to avoid unnecessary overlap;

3. **Calls on** the Parties and invites non-Parties to arrange, host and participate actively in seminars, workshops and meetings to facilitate the implementation of the Convention;

4. **Invites** every relevant body or agency, whether national or international, governmental or non-governmental, to participate actively in the activities included in the work plan.

## Appendix

### WORK PLAN FOR THE IMPLEMENTATION OF THE CONVENTION FOR THE PERIOD UP TO THE FOURTH MEETING OF THE PARTIES

Activity	Objective(s)	Method of work (sub-activities)	Organizational arrangements	Expected outcome	Time schedule	Budget
<b>TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT (EIA)</b>						
Compliance with and implementation of the Convention	Enhance the implementation of and compliance with the Convention	<ol style="list-style-type: none"> <li>1. Consideration by the Implementation Committee of received compliance submissions</li> <li>2. Examination of the Committee's structure and functions</li> <li>3. Report on the Committee's activities to the fourth meeting of the Parties</li> <li>4. Examination of the outcome of the first review of implementation</li> <li>5. Preparation of a revised and simplified questionnaire</li> <li>6. Distribution of the questionnaire to the Parties to the Convention for them to complete and return</li> <li>7. Preparation of a draft review of implementation</li> </ol>	<p>1-5. Undertaken by the Implementation Committee, to be chaired by Finland (6 meetings in 2004-2007), with the support of the Secretariat.</p> <p>6-7. Carried out by the Secretariat.</p>	<ol style="list-style-type: none"> <li>1. Recommendations on compliance submissions</li> <li>2. Possible revision of the Committee's structure and functions</li> <li>3. Reports of the Committee meetings and a synthesis report to fourth meeting of the Parties</li> <li>4. Summary on compliance issues from the first review of implementation</li> <li>5-6. Revised and simplified questionnaire</li> <li>7. Second draft review of implementation for consideration by Working Group on EIA and fourth</li> </ol>	<p>1-3. 2004-2007, presented to fourth meeting of the Parties</p> <p>4. By the end of 2004</p> <p>5. Presentation of draft revised and simplified questionnaire to Working Group by end of 2005</p> <p>6. Issue of questionnaire early 2006. Return of questionnaires by mid 2006</p>	Included in Implementation Committee and Secretariat costs

Activity	Objective(s)	Method of work (sub-activities)	Organizational arrangements	Expected outcome	Time schedule	Budget
				meeting of the Parties	7. Presentation of draft review to Working Group at end of 2006 and to fourth meeting of the Parties in 2007	
Exchange of best practice	Improved implementation of the Convention by learning from Parties' experiences	<p>The convening of meetings of experts (including practitioners) on:</p> <ul style="list-style-type: none"> <li>• Transboundary projects;</li> <li>• Post-project analysis and monitoring; and</li> <li>• Transboundary EIA methodologies.</li> </ul> <p>Meetings to be held during or back to back with Working Group on EIA meetings, or a one- or two-day (stand-alone) thematic workshops.</p>	<p>Lead countries:</p> <ul style="list-style-type: none"> <li>• Italy and Switzerland (for transboundary projects);</li> <li>• To be determined (for post-project analysis and monitoring);</li> <li>• To be determined (for transboundary EIA methodologies).</li> </ul> <p>Coordination by and support from the secretariat.</p>	<ul style="list-style-type: none"> <li>• Meeting reports for consideration by the Working Group on EIA.</li> <li>• Posting on Convention web site of best practice guidance, meeting reports and meeting presentations.</li> </ul>	Annual meetings in the period 2004-2006	6 lunchtime meetings each costing approx. US\$1,000
Subregional cooperation to strengthen contacts between the Parties	Improved and developed application of the Convention within subregions	<p>The holding of subregional meetings supported by virtual networks (information exchange), for example:</p> <ul style="list-style-type: none"> <li>• To discuss key elements of practical application of the Convention, including public participation;</li> <li>• To review specific transboundary issues and effects (regional seas, transboundary watercourses, etc.).</li> </ul>	<p>Subregions and lead countries to organize and provide venue:</p> <ul style="list-style-type: none"> <li>• South East Europe – Serbia and Montenegro, with financial support of Switzerland;</li> <li>• Mediterranean – Croatia and Italy, with support from UNEP/MAP;</li> <li>• Balkan and Black Sea – Bulgaria;</li> <li>• Baltic Sea – Sweden,</li> </ul>	<ul style="list-style-type: none"> <li>• Meeting outcomes to be posted on web sites of participating countries.</li> <li>• Meeting reports for consideration by the Working Group on EIA.</li> </ul>	<p>Subregional meetings</p> <ul style="list-style-type: none"> <li>• South East Europe – September 2004,</li> <li>• Mediterranean – early 2005;</li> </ul>	Participants cover own travel and accommodation costs, while lead countries cover organizational and venue costs (approx. US\$ 20,000 per sub-regional meeting)

Activity	Objective(s)	Method of work (sub-activities)	Organizational arrangements	Expected outcome	Time schedule	Budget
			Denmark, Finland and Estonia.  Reporting country: To be determined.  Coordination and support by the secretariat.		<ul style="list-style-type: none"> <li>Balkan and Black Sea – autumn 2005;</li> <li>Baltic Sea – 2005</li> </ul>	
Capacity-building in Eastern Europe, the Caucasus and Central Asia (EECCA)	Increased awareness and professional skills of officials and of the public in relation to transboundary EIA and to the application of the Convention	<ul style="list-style-type: none"> <li>Preparation and dissemination of guidance               <ul style="list-style-type: none"> <li>Drafting of guidance on the practical application of the Convention for specific needs of the subregion (for cases of transboundary EIA in relation to, inter alia, transboundary watercourses) by a consultant;</li> <li>Carrying-out of workshops in Central Asia (Kyrgyzstan), in the Caucasus (Armenia) and in Eastern Europe (Ukraine) to finalize the guidance;</li> <li>Active dissemination of the guidance in the participating countries (through, for example, national workshops).</li> </ul> </li> <li>Training course in transboundary EIA – methodology.</li> <li>Supporting knowledge of the Convention and of transboundary EIA in Russian-speaking countries through the dissemination of a relevant Russian-language journal (<i>Environmental Expertise and EIA</i>, with 6 issues a year).</li> </ul>	Lead countries: <ul style="list-style-type: none"> <li>Kyrgyzstan for the guidance, including workshop;</li> <li>Armenia for Caucasian workshop;</li> <li>Ukraine for East European workshop;</li> <li>Tajikistan for training course;</li> <li>Russian Federation with NGO Ecoterra for journal.</li> </ul> Financial support from [Switzerland and] the Organization for Security and Cooperation in Europe for the guidance and the workshop in Kyrgyzstan.  Potential donors for other activities sought.  Undertaken with the support of the secretariat.	Guidance, workshop and training course reports for consideration by the Working Group on EIA.  Reports from EECCA countries on improved capacity.	Draft guidance available in 2004  Guidance workshops in 2004-2005  Dissemination of final guidance 2006  EECCA reports in 2006  Training course (Tajikistan) 2005	Consultancy for preparation of guidance US\$20,000  3 workshops, each costing US\$30,000  Contributions in kind, for national workshops for dissemination of the guidance, from the 12 countries in the region, each costing US\$5,000  Training course approx. \$60,000, including costs for 2 participants from each of the



Activity	Objective(s)	Method of work (sub-activities)	Organizational arrangements	Expected outcome	Time schedule	Budget
						12 countries  Journal subscription US\$ 17,000 a year
Examination of the substantive relationship between the Convention and the Protocol	Clarification of the relationship between the Convention and the Protocol	<ul style="list-style-type: none"> <li>• Presentation and discussion at a one-day workshop back to back with a Working Group on EIA meeting of the results of an EC study on the relationship between the EC Directives on EIA and SEA that are relevant to the Convention and the Protocol.</li> <li>• Decision by the Working Group on EIA on items for further study, which may include preparation of a report on the substantive relationship between the Convention and the Protocol.</li> </ul>	<p>Lead organization:</p> <ul style="list-style-type: none"> <li>• European Commission (workshop);</li> <li>• Belgium (report).</li> </ul> <p>Undertaken with the support of the secretariat.</p>	<p>Workshop report including items for further study to be considered by the Working Group on EIA.</p> <p>Report on the substantive relationship between the Convention and the Protocol to be considered by the Working Group.</p>	<p>Workshop late 2005.</p> <p>Report late 2006.</p>	<p>Back-to-back meeting cost US\$5,000</p> <p>Report cost US\$10,000</p>
<b>STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA)</b>						
SEA capacity-building needs analysis in EECCA	Understand national and subregional capacity for the Protocol's implementation	<ul style="list-style-type: none"> <li>• Preparation of national and subregional reports describing current capacity-building activities and capacity development needs.</li> <li>• Design of framework for future capacity development action plans.</li> <li>• Development of national and subregional capacity-building action plans by the countries themselves.</li> </ul>	<p>Lead country: Georgia.</p> <p>UNDP / RBEC – contribution in kind, related to the project of capacity-building in Armenia, Georgia, Republic of Moldova, Ukraine, Belarus.</p> <p>Undertaken with the support of REC-CEE and the secretariat.</p> <p>Other countries, possibly covered by interested institutions or donors.</p>	Reports, plans and studies to be considered by the Meeting of the Signatories to the Protocol.	January 2005	US\$40,000, of which US\$ 20,000 in kind from UNDP / RBEC

Activity	Objective(s)	Method of work (sub-activities)	Organizational arrangements	Expected outcome	Time schedule	Budget
Production of a capacity development manual, and provision of training, to support implementation of the SEA Protocol	Capacity development in SEA through preparation and dissemination of a capacity development manual	<ul style="list-style-type: none"> <li>Drafting of manual (slides, notes for speakers, case studies and background documents) in English and Russian.</li> <li>Subregional workshops to review the draft manual with EC Member States, countries of South-East Europe and selected EECCA countries.</li> <li>Drafting and editing of the final first, electronic edition of the manual in English, French and Russian.</li> </ul> <p>In addition, preparation of modules on:</p> <ul style="list-style-type: none"> <li>Transboundary consultations under article 10 of the Protocol;</li> <li>Health issues within SEA.</li> </ul>	<p>Lead organization: REC-CEE, supported by the secretariat.</p> <p>Assistance with translation: Ecoline (Russian), NGO Unisféra (French).</p> <p>Module on health issues, lead countries: Czech Republic, Norway, Sweden, Switzerland (public health authorities), supported by WHO/Euro.</p>	Progress reports and the final manual, including additional modules, to be considered by the Meeting of the Signatories to the Protocol.	September 2004 to July 2005	<p>For draft manual: REC-CEE contribution in kind worth US\$ 45,000</p> <p>For workshops: REC-CEE contribution in kind worth US\$ 75,000; additional funding required US\$ 55,000</p> <p>For final manual: US\$ 35,000</p> <p>Costs for health module to be borne by national public health authorities and WHO/Euro</p>
Institutional and procedural activities	Preparation for the first meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol	<p>(i) Consideration of whether any amendments are necessary to the rules of procedure of the Meeting of the Parties to the Convention arising from the application of these rules to the Protocol, in accordance with article 14, paragraph 5, of the Protocol and, if necessary, the drafting of such amendments;</p> <p>(ii) If necessary, preparation for the election of substitute members of the Bureau</p>	Germany, Netherlands, United Kingdom to present proposals to the Meeting of the Signatories for its consideration.	Report to be considered by the Meeting of the Signatories.	Consideration by the second meeting of the Signatories and approval by the third meeting of the	No anticipated costs.

Activity	Objective(s)	Method of work (sub-activities)	Organizational arrangements	Expected outcome	Time schedule	Budget
		<p>of the Meeting of the Parties, in accordance with article 14, paragraph 3, of the Protocol;</p> <p>(iii) Consideration of the modalities for the application of the compliance procedure of the Convention to the Protocol and preparation for the adoption of modalities, in accordance with article 14, paragraph 6, of the Protocol;</p> <p>(iv) Preparation for establishing such subsidiary bodies as are considered necessary for the implementation of the Protocol, in accordance with article 14, paragraph 4 (d), of the Protocol; and</p> <p>(v) Consideration of the institutional and administrative aspects of the relationship between the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol and the Meeting of the Parties to the Convention.</p>			Signatories.	

EC: European Community.

MAP: Mediterranean Action Plan.

REC-CEE: The Regional Environmental Centre for Central and Eastern Europe.

UNDP/RBEC: United Nations Development Programme's Regional Bureau for Europe and the Commonwealth of Independent States.

UNEP: United Nations Environment Programme.

WHO/Euro: World Health Organization's Regional Office for Europe.

**Annex X**

**DECISION III/10  
BUDGET AND FINANCIAL ARRANGEMENTS  
FOR THE PERIOD UP TO THE FOURTH MEETING OF THE PARTIES**

**The Meeting,**

Recalling its decision II/13 on the budget and financial arrangements for the period up to the third meeting of the parties,

Recognizing that effective implementation of the Convention depends, inter alia, on the availability of sufficient financial and human resources,

Recognizing also that not all activities in the previous work plan (decision II/11) were undertaken because of a lack of funding,

Believing that the need for stable and predictable sources of funding and a fair sharing of the burden should be the guiding principles of any financial arrangements established under the Convention,

Determined to ensure that the necessary resources are available for implementing the core elements of the work plan,

Believing that a scheme of voluntary contributions by Parties and other States or regional economic integration organizations, based upon a system of shares, can provide an effective and workable solution,

1. Endorses a system of shares, whereby countries choose to make contributions equivalent in value to a number of shares of the budget;
2. Decides that activities under the work plan for the period up to the fourth meeting of the Parties not covered by the United Nations regular budget should be covered by contributions of 1312 shares of one thousand United States dollars each, of which 520 shares would cover the core requirements and 792 shares would cover the remaining non-core requirements;
3. Agrees the budget of the Convention for the period up to the fourth meeting of the Parties to the Convention including budgetary lines for the Protocol on Strategic Environmental Assessment up to the fourth meeting of the Parties to the Convention, or the first meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol, whichever occurs first, as set out in the table below;
4. Acknowledges that the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol will decide all matters pertaining to the Protocol, including its work plan and the related budget;

5. Agrees that contributions shall be allocated to the budgets of the individual items in the table below in the order of priority set for each item unless and to the extent that the contributor specifies that a contribution should be allocated to a particular item in the table;

6. Urges Parties and encourages non-Parties and relevant international organizations to contribute resources to the budget in cash or in kind;

7. Requests that all such contributions in cash be made to the UNECE Trust Fund on Local Technical Cooperation (Espoo Convention);

8. Welcomes any additional contributions towards activities under the work plan of the Convention;

9. Decides that the Working Group on Environmental Impact Assessment shall prepare a further draft decision on financial arrangements under the Convention for adoption at the fourth meeting of the Parties, based on experience gained in the meantime under the financial arrangements adopted by this meeting;

10. Requests the secretariat, in accordance with the financial rules of the United Nations, to monitor the expenditure of the funds and to prepare a report for the next meeting of the Parties, including information on how much Parties and other participating States contributed to the budget of the Convention in cash and in kind, and on how the contributions were spent.

## BUDGET FOR THE IMPLEMENTATION OF THE CONVENTION FOR THE PERIOD UP TO THE FOURTH MEETING OF THE PARTIES

Priority	Activity	Notes / sub-activities	Units	Cost per item per unit (shares)	Cost per unit (shares)	Number of units over 3 years	Total cost over 3 years (shares)	Contribution in kind earmarked (shares)	Contributor
<b>Organizational (with most meetings taking place in Geneva)</b>									
1	4th meeting of the Parties to the Espoo Convention, Bucharest	Participation of countries in transition	meetings	45	170	1	170		
		Participation of NGOs		15					
		Participation of non-UNECE countries		25					
		Venue, etc.		85					
1	1st meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol, Geneva (if to be held before the 4th meeting of the Parties to the Convention)	Participation of countries in transition	meetings	25	40	1	40		
		Participation of NGOs		10					
		Participation of non-UNECE countries		5					
1	Meetings of the Signatories to the Protocol (taking into account likely savings of meetings being held back to back)	Participation of countries in transition	meetings	25	40	3	120		
		Participation of NGOs		10					
		Participation of non-UNECE countries		5					
1	Meetings of Working Group on EIA (taking into account likely savings of meetings being held back to back)	Participation of countries in transition	meetings	25	40	4	160		
		Participation of NGOs		10					
		Participation of non-UNECE countries		5					
2	Bureau meetings (free-standing)	Participation of countries in transition	meetings		5	1	5		
1	Bureau meetings (back to back with other meetings)		meetings		0	4	0		
1	Meetings of the Implementation Committee	Participation of countries in transition	meetings		5	6	30		
2	External expert to provide secretariat support for the implementation of the Convention and the Protocol	External expert					120		
2	Further secretariat support for the implementation of the Convention and the Protocol	Promotional materials					10		
		Secretariat travel in relation to the Work Plan					40		

Priority	Activity	Notes / sub-activities	Units	Cost per item per unit (shares)	Cost per unit (shares)	Number of units over 3 years	Total cost over 3 years (shares)	Contribution in kind earmarked (shares)	Contributor
3	Further secretariat support for the implementation of the Convention and the Protocol	Consultants					60		
		Promotional materials					20		
		Secretariat travel in relation to the Work Plan					20		
3	Promotion of contacts with countries outside the UNECE region	Travel of secretariat and chair	missions		5	5	25		
<b>Substantive activities - transboundary environmental impact assessment</b>									
1	Review of the implementation of the Convention		included in Implementation Committee and secretariat costs above						
2	Exchange of best practice	Lunchtime meetings during other meetings in Geneva	lunch-time meetings		1	6	6		
2	Subregional cooperation	Subregional meetings	costs to be borne by participants and lead countries						
2	Capacity-building in the countries of Eastern Europe, the Caucasus and Central Asia, and others	Preparation of draft guidance by a consultant					20	20	[Switzerland,] OSCE
		Subregional workshop in Kyrgyzstan	work-shops		30	1	30	30	
		Subregional workshops in Armenia / Ukraine	work-shops		30	2	60		
		National workshops	costs to be borne by countries						
3	Capacity-building in the countries of Eastern Europe, the Caucasus and Central Asia, and others	Distribution of a relevant Russian-language journal ( <i>Environmental Expertise and EIA</i> )	a year		17	3	51		
		Training course	courses		60	1	60		
3	Examination of the substantive relationship between the Convention and the Protocol	Workshop back to back with other meetings in Geneva	work-shops		5	1	5		
		Preparation of a report by a consultant					10		

Priority	Activity	Notes / sub-activities	Units	Cost per item per unit (shares)	Cost per unit (shares)	Number of units over 3 years	Total cost over 3 years (shares)	Contribution in kind earmarked (shares)	Contributor
Substantive activities – strategic environmental assessment									
1	Institutional and procedural activities	Preparatory work for MOS	no additional cost						
2	SEA capacity-building needs analysis	National and subregional needs analyses					40	20	UNDP RBEC
2	Capacity development in SEA, including creation of a capacity development manual	Drafting of manual					45	45	REC
		Subregional workshops	work-shops			130	75	REC	
		Finalization of manual					35		
TOTALS (US\$):							1,312,000	190,000	
Total (in shares):							1,312	190	

<b>Share value (US\$):</b>	<b>1,000</b>
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OSCE: Organization for Security and Cooperation in Europe.

REC-CEE: The Regional Environmental Centre for Central and Eastern Europe.

UNDP/RBEC: United Nations Development Programme's Regional Bureau for Europe and the Commonwealth of Independent States.

#### Summary – Priorities 1 - 3 – Total costs (US\$)

Priority 1	520,000
Priority 2	541,000
Priority 3	251,000
<b>Total cost over three-year period</b>	<b>1,312,000</b>



**Annex XI****DECISION III/11****FINANCIAL ASSISTANCE TO REPRESENTATIVES OF COUNTRIES IN  
TRANSITION, NON-GOVERNMENTAL ORGANIZATIONS AND COUNTRIES  
OUTSIDE THE UNECE REGION****The Meeting,**

Aware of the importance of wide participation by the Parties in its activities in order to ensure progress,

Aware also of the need to facilitate the participation of certain countries with economies in transition that may otherwise not be able to take part,

1. Calls upon countries in transition to finance to the extent possible their own participation in the activities under the Convention in order to ensure that the limited funds available are used efficiently;
2. Urges Parties and encourages non-Parties and relevant international organizations to contribute financial resources to enable countries with economies in transition and non-governmental organizations to participate in the meetings under the Convention;
3. Recommends that there should be no differentiation between Parties and non-Parties within the UNECE region for the purposes of providing financial assistance;
4. Also recommends that the Convention should seek to apply the guiding criteria established and periodically updated by the Committee on Environmental Policy for financial assistance to support the participation of experts and representatives from countries with economies in transition in meetings and workshops organized within the framework of the Convention and other relevant activities, depending upon the availability of funds;
5. Requests the secretariat to grant, subject to the availability of funds, financial assistance for the participation in meetings under the Convention of designated experts from non-governmental organizations identified in a list to be drawn up by its Bureau, subject to a maximum of five (5) such experts, unless otherwise decided by the Working Group on Environmental Impact Assessment;
6. Recalling the amendment to the Convention (decision II/14) which allows United Nations Member States not members of UNECE to accede to the Convention, decides that its Bureau shall, depending on the availability of funding, and subject to priority being given to funding (i) the work plan and (ii) the participation of experts and representatives referred to in paragraphs 4 and 5, examine requests for possible financial assistance for the participation in meetings under the Convention by representatives and experts from States outside the UNECE region.

**Annex XII**

**DECISION III/12  
PREPARATIONS FOR THE FIRST MEETING OF THE PARTIES TO THE  
CONVENTION SERVING AS THE MEETING OF THE PARTIES TO THE  
PROTOCOL**

**The Meeting,**

Recalling the resolution of the Signatories to the Protocol on Strategic Environmental Assessment on the occasion of the extraordinary meeting of the Parties to strive for the entry into force of the Protocol as soon as possible,

Acknowledging that at its first and subsequent meetings following the entry into force of the Protocol, it will be necessary for the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol to take decisions necessary for the implementation of the Protocol, including on the content of its work plan and on its budget,

Noting that it will be necessary for preparations to take place in the period leading up to the first meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol,

1. Requests the Meeting of the Signatories to the Protocol to undertake the preparatory work identified in paragraph 4 below;
2. Decides to enable the Meeting of the Signatories to convene a maximum of three times prior to the fourth meeting of the Parties to the Convention, or the first meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol, whichever occurs first;
3. Decides that the Meeting of the Signatories will convene consecutively to the Working Group on Environmental Impact Assessment, unless it is considered necessary to do otherwise;
4. Also decides that the following activities shall be undertaken in order to prepare for the first meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol, and shall be reflected in the work plan of the Convention:
  - (a) Institutional and procedural activities:
    - (i) Consideration of whether any amendments are necessary to the rules of procedure of the Meeting of the Parties to the Convention arising from the application of these rules to the Protocol, in accordance with article 14, paragraph 5, of the Protocol; and if necessary, the drafting of such amendments;
    - (ii) If necessary, preparation for the election of substitute members of the Bureau of the Meeting of the Parties, in accordance with article 14, paragraph 3, of the Protocol;

- (iii) Consideration of the modalities for the application of the compliance procedure of the Convention to the Protocol and preparation for the adoption of modalities, in accordance with article 14, paragraph 6, of the Protocol;
  - (iv) Preparation for establishing such subsidiary bodies as are considered necessary for the implementation of the Protocol, in accordance with article 14, paragraph 4 (d), of the Protocol; and
  - (v) Consideration of the institutional and administrative aspects of the relationship between the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol and the Meeting of the Parties to the Convention.
- (b) The other activities relating to the Protocol listed in the work plan.
5. Furthermore decides to reflect this decision in the budget of the Convention.

### **Annex XIII**

#### **CAVTAT DECLARATION**

We, the high-level representatives of the UNECE member States and of the European Community, gathered in Cavtat, Croatia, from 1 to 4 June 2004 on the occasion of the third meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context,

1. Celebrate the seventh year of the entry into force of the Convention;
2. Pay tribute to the continued efforts of Parties and stakeholders in supporting the implementation of the Convention;
3. Recall that the Convention is the most significant international legally binding instrument dedicated to environmental impact assessment (EIA) in a transboundary context;
4. Note with satisfaction that the Convention has promoted an internationally accepted standard for EIA development and implementation, with regard to transboundary impacts;
5. Acknowledge that the Convention has had an important role in building EIA capacity among Parties;
6. Welcome the adoption of the Protocol on Strategic Environmental Assessment at the Ministerial Conference “Environment for Europe” in Kiev and the work of countries and stakeholders in concluding it;
7. Anticipate the early ratification of the Protocol and its coming into force;
8. Acknowledge the activities undertaken on public participation by the Parties to the Convention and note the coming into force of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and its work to strengthen public participation;
9. Recognize with appreciation the valuable work carried out under the work plan adopted at the second meeting of the Parties, particularly:
  - (a) The steps taken by Parties and non-Parties to ensure that their EIA systems are consistent with the provisions of the Convention;
  - (b) The valuable guidance on:
    - (i) Good practice in EIA prepared by the Governments of Finland, the Netherlands and Sweden;
    - (ii) Public participation prepared by the Government of the Russian Federation; and

(iii) Subregional cooperation prepared by the Governments of Croatia and Poland;

(c) The development and operation of the database on transboundary EIA by the Government of Poland;

10. Note the work carried out to promote health as an integral aspect of EIA in accordance with the recommendations of the London Conference of Ministers of Health and Environment and consistent with the Convention;

11. Welcome the adoption of the second amendment to the Convention introducing provisions that will make the Convention more efficient and contribute to the transparency of its application;

12. Invite civil society and all stakeholders to continue to assist with and contribute to the development and implementation of the Convention and the preparations for the implementation of the Protocol, noting that the meetings under the Convention provide for an exchange of views and information;

13. Encourage multilateral lending institutions and bilateral aid agencies to apply the principles of the Convention to all their development projects with potentially significant transboundary environmental effects and to apply the principles of the Protocol to the development and implementation of their plans and programmes;

14. Recognize the contribution of EIA and strategic environmental assessment to national decision-making in support of sustainable development;

15. Encourage the Parties to the Convention to develop further capacity for its implementation on the basis of demonstrated need, giving particular support to the countries of South-Eastern and Eastern Europe, the Caucasus and Central Asia and, wherever possible, working with regional institutions to make expertise and resources available as necessary;

16. Also encourage the Signatories to the Protocol to develop capacity for its ratification and implementation on the basis of demonstrated need, giving particular support to the countries of South-Eastern and Eastern Europe, the Caucasus and Central Asia and, wherever possible, working with regional institutions to make expertise and resources available as necessary;

17. Call upon UNECE States to ratify the Convention and its amendments, and invite other States that are Members of the United Nations to accede to the Convention once the amendment adopted at the second meeting of the Parties has entered into force;

18. Also call upon UNECE States to ratify the Protocol and invite other States that are Members of the United Nations to accede to it once it has entered into force.