

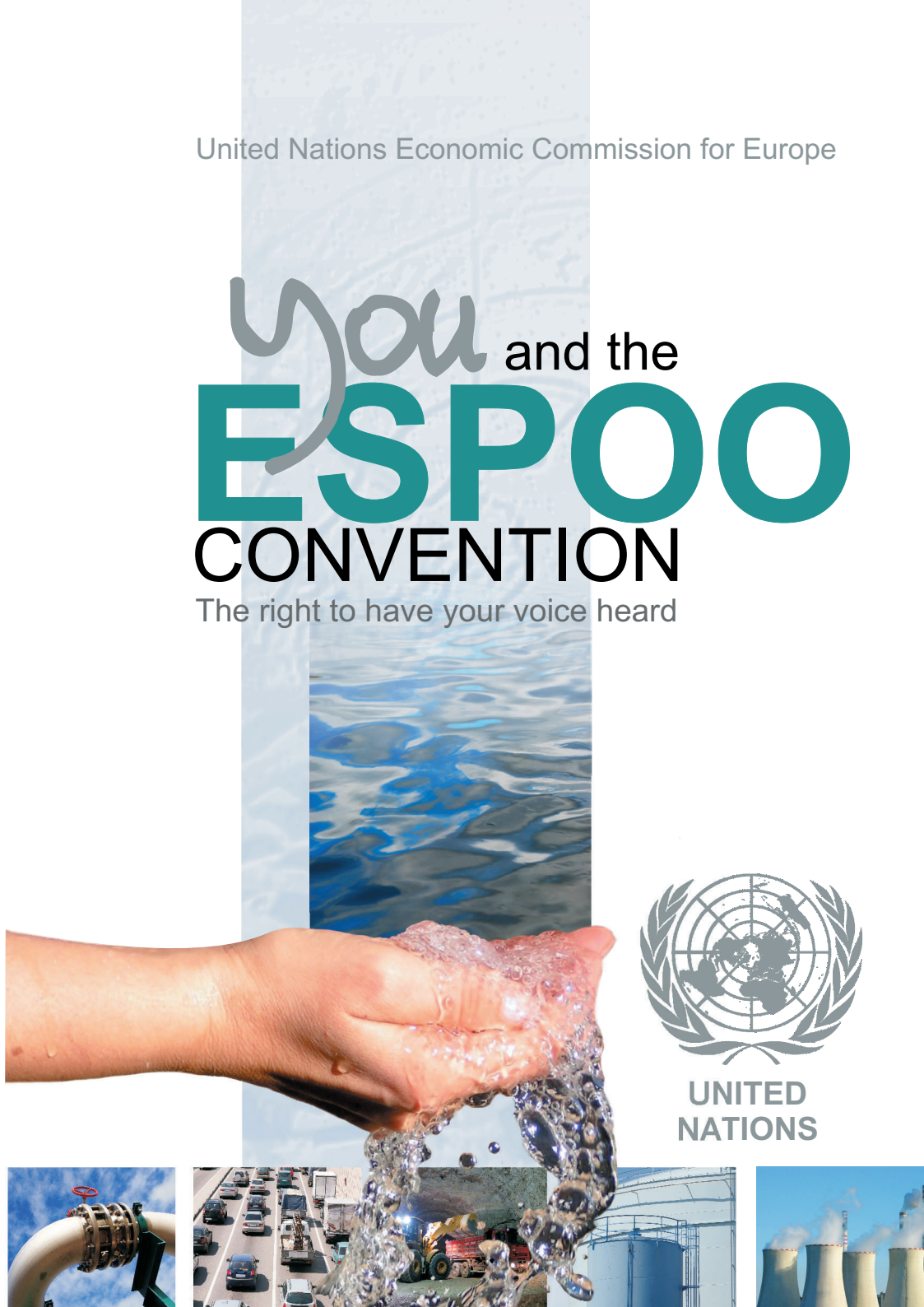
The Espoo Convention on Environmental Impact Assessment in a Transboundary Context is the world's most comprehensive treaty on how countries should notify and consult each other on major projects that might have adverse environmental impacts across borders. This is important because environmental threats do not stop at national frontiers. The Convention is applied to a range of projects from cross-border bridges to nuclear power plants.

To find out more about the Convention
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www.unece.org/env/eia

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You and the **ESPOO** CONVENTION

The right to have your voice heard



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The right to have your voice heard

Twenty kilometres up river, in another country, plans are being drawn up for a new hydroelectric power station. You worry about what it means for you and your family. Will you be affected? How can you find out more? If you can get information, will you be able to understand it—will it be too technical, will it even be in a language you can read? And what then? If you're still worried once you have found out what is being planned, what can you do about it? Can you write to the government of the other country to express your concerns? Will they understand? Will they listen? Or will it be too late?

The Espoo Convention helps answer these and many more questions. This short guide describes the Espoo Convention, how it works and what rights it gives you, in particular if both your country and the country where the planned hydroelectric power station is to be built are member countries.

About the Espoo Convention

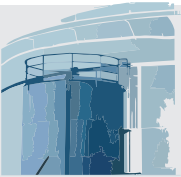
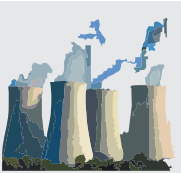
The Convention on Environmental Impact Assessment in a Transboundary Context was adopted in 1991 at Espoo in Finland and entered into force in 1997. It is commonly called the Espoo Convention. The Convention sets out the rights and duties of countries when the environmental impact of a planned activity is expected to cross a border.

Countries normally have to apply the provisions of the Convention when two requirements are met:

The proposed activity must be listed in the Convention—for example, a power station, oil refinery, pulp or paper mill, motorway or railway, pipeline or mine. See pages 24-25 for the full list. Some countries apply the Convention to a longer list of activities, so it is worth checking your national laws.

The proposed activity must be likely to cause a significant adverse transboundary impact.

It is also important to note that the Convention not only applies to the activities listed on pages 24-25, but also to any major changes to these activities that may have a significant adverse impact across borders. For example, the widening of a motorway close to a border would normally qualify.



However, even when these conditions are not met, countries can discuss whether the Convention should be applied to an activity. For example, a large new shopping centre in a border town may affect traffic flows or the landscape in a neighbouring country. Other considerations include the size of the activity, whether it is located in a particularly sensitive area (such as a nature reserve or a site of historical importance), and whether it is likely to be particularly harmful to people or their environment.

Application of the Convention



Notification

The procedure under the Convention starts with the country where a potentially damaging activity is planned (called the “country of origin”) notifying any other country that it thinks may be affected (the “affected country”). The Convention applies strictly only to countries that are Parties to the Convention (see list on page 27). However, countries sometimes choose to notify neighbours that are not Parties.


This notification should be made as early as possible, and no later than when the country of origin informs its own public. This obviously depends on when the authorities in the country of origin themselves learn of the proposed activity, and because national procedures vary—for example as to when developers should begin seeking consent for their plans—this can affect the timing of the notification to another country. An affected country has to respond within a deadline to indicate whether it wishes to be involved further.

Sometimes an activity planned in one country is likely to affect a number of other countries, and often a planned activity extends across a border. As a result, there is more than one country of origin and a country can indeed be both a country of origin and an affected country.

The Convention includes provisions aimed at establishing mechanisms to prevent a dispute about its application or interpretation. So, for instance, a country that believes it could be at risk from an activity on its neighbour's territory about which it has not been notified can ask for enough information to allow discussions to be held. If both countries then agree that a significant impact is likely, the provisions of the Convention will apply. If they do not agree, then the country that believes itself to be at risk can submit the question to a commission of inquiry, which will give its opinion on the probability of a significant impact.

Environmental impact assessment

Every country that is a Party to the Convention also has a national procedure of environmental impact assessment, or EIA, which is a process of identifying, predicting, evaluating and mitigating the environmental effects of development proposals prior to major decisions being taken and commitments made.



The Convention sets out the minimum standards for the content of the EIA documentation that has to be submitted to the competent, decision-making authority in the country of origin, covering subjects such as the presentation of alternatives, including the “no action alternative”, and a description of possible mitigation measures and the predictive methods used. The EIA

documentation should identify uncertainties and gaps in knowledge, and outline monitoring and management programmes and any plans for post-project analysis (an analysis of the activity as implemented and the impact observed). It will be based in part on information made available by the country liable to be affected by the cross-frontier impacts, which is expected to supply “reasonably obtainable information” to the country of origin “promptly”, once it has said it wishes to participate in the EIA procedure under the Convention.

National environmental impact assessment



EIA has been in use in some countries for 25 years or more. Activities subject to the procedure typically include infrastructure projects (transport arteries, ports, airfields, pipelines and transmission cables); water management (groundwater extraction, land reclamation and dykes); recreational facilities, including stadiums and theme parks; rural area projects such as industrial and residential building and military training grounds; waste treatment and processing plants and landfill sites; and power plants, oil and gas extraction sites, refineries and chemical plants.

Usually the basis of the EIA procedure is a public document, the environmental impact statement, in which the person or enterprise proposing the development—known as “the proponent”—has to describe all its potential environmental effects. The other actors are the administrative body that will decide on the project, “the competent authority”; perhaps a body of independent experts; legal advisers to the competent authority; and the public, defined as including not only environmental organizations and other interest groups but every individual who may be affected by the project if it does go ahead.

A project will be subject to EIA if it may have serious and harmful environmental

consequences. One way of judging whether this is likely is by reference to the threshold values that have been set for most types of the activities listed. Threshold values are especially important in what they say about the size or location of a project. Most countries that are Parties to the Convention have set such thresholds in their national EIA legislation.

The emphasis of the environmental impact statement the proponent has to produce is on possible alternatives to the project and their environmental impacts, with perhaps an indication of the most environmentally sound among them. The competent authority may also demand compensatory measures—the creation, perhaps, of a new area for wildlife if the project will inevitably destroy an existing one. If there is uncertainty about any of the topics covered in the environmental impact statement—the project's long-term effects, for example, or the way one effect may interact with another—this must be clearly stated. The process does not end once the competent authority has given a project the go-ahead. An evaluation programme must also be designed to ensure that the predicted outcomes really do happen.

The scoping procedure—concentrating on the essentials

An important part of an environmental impact assessment is what is known as the “scoping procedure”, an approach designed to identify the main issues of concern early in the process, when alternatives are still being considered, and then ensuring that they are assessed at the right level. This attempt to pick out the essentials in the opening stages of an EIA makes it easier for mitigation measures to be incorporated into project designs. Conversely, scoping can also be an opportunity to point out the benefits a project will offer, and it will sometimes provide an opportunity to identify ways of actually improving the environment.

Some developers produce a scoping report as a basis for discussion before going on to prepare a full environmental statement. In some countries, however, scoping reports are drawn up by the competent authority. The scoping procedure makes it easier for consultations to begin before a preferred option has been chosen between the developer, outside experts, the administrative body that will take the final decision and members of the public.



Public Participation

The Convention refers several times to the right to public participation in the EIA procedure. It requires both countries to make sure that the public of the affected country—in the areas likely to feel the impact—has the chance to comment on and object to the proposed activity, with its observations being passed on to the competent authority in the country of origin.

It also requires both countries to arrange the distribution of the EIA documentation not only to the authorities in the affected country, but also to those of its people who live in the relevant area. It can be confusing to know which country should be responsible for each part of this process, though international law may well be a guide: the country of origin, for instance, will be able to conduct public hearings on its neighbour's territory only with its neighbour's consent.



How the Convention works

You will find it easier to have your voice heard if you are familiar with the procedure set out in the Convention. To see what that procedure entails, it may be helpful to rehearse the case of that little-known but often-imagined European country, Fantasia. A perennial problem for the Fantasian Government is energy, so it decided recently to build a barrage across the river Styx, incorporating enough turbines to produce a reliable supply of electricity. The Fantasian Environment Minister thought a hydroelectric plant would give his country a dependable source of energy without adding to its greenhouse gas emissions. It would be sustainable development in action. But, just in case the reference in the Convention to “large dams and reservoirs” might apply to the barrage, he sent a notification and an outline of the plan on the day it was published in Fantasia to his counterpart in Arcadia, as both countries are Parties to the Convention (although he did not believe that the plant was likely to cause a significant adverse impact across the border).



Arcadia, immediately upstream of Fantasia, shares a long common border with its neighbour. The Arcadian Minister, far from congratulating Fantasia, was outraged. He did not know—in fact he could not know—the precise implications of the project. But he believed there would be an inevitable adverse impact on his country's territory. It was obvious, he said: the Styx flowed for hundreds of miles through Arcadia before entering Fantasia. And the barrage and power plant would be only a few kilometres from the border: Although they would be physically on Fantasian territory, their impact would be felt over a wide stretch of Arcadia. That impact would be devastating, because the barrage would mean the level of the Styx would rise by several metres as it flowed through Arcadia. Farmers along the river banks faced the loss of many productive hectares, and some of the country's renowned antiquities were at risk of destruction. The Minister invoked the Convention and said his Government would fully participate in the drawing-up of an environmental impact assessment.

The Fantasian Government, anxious to press ahead with construction, began the formal procedure specified under the Convention to identify and list the possible impacts as a starting point for talks with the Arcadians. It was able to send them the detailed plans of the barrage and power plant, and an indication of the range of possible impacts within a few weeks. What it could not do was say just how much the level of the Styx would rise, or whether there were any realistic mitigation measures it could offer to incorporate at this stage. It explained to the Arcadians that the information was the fullest it could provide, but was

inevitably incomplete. It said the alternative—a coal-fired power station—would be worse for both countries. And it said the alternative of no action was no alternative at all, because the Fantasians would no longer tolerate being left in the dark and the cold when the power failed. Bringing Arcadia up to date with its plans was expensive and laborious for Fantasia, as it involved not only translating all the documents into Arcadian (with its distinctive script), but paying for them to be distributed to the communities along the Styx, and then hiring interpreters fluent in the notoriously difficult dialect of Arcadian (itself not widely spoken outside the country) commonly used along the river banks.



By this stage a public inquiry was under way in Fantasia itself, designed to reassure every Fantasian that the benefits of the scheme would outweigh its drawbacks. Most of them, tired of the frequent power cuts, were fairly soon satisfied, and although several groups of fishermen remained

implacable, the rest of the Fantasian public quickly acquiesced.

It was very different in Arcadia, however. The farmers there have influence, and their votes can make and break governments.

The public consultations in the towns along the Styx were protracted and bitter. At the end of the consultation period the Arcadian Government sent all the information it had gleaned to the Fantasians. The underlying message was clear: The scheme, as it stood (and with all the uncertainties which both sides acknowledged), involved unacceptable damage to Arcadia and must be either withdrawn or significantly modified.

The Arcadian Government had allowed much longer for the consultation than had been needed in Fantasia. So months had passed before its information could reach the Fantasians, who were by now more anxious than ever to press ahead. But at least the delay had given them time to do most of the work they needed to produce a full EIA, intended to fill in many of the gaps in their knowledge about the probable impact of the scheme. They combined their own findings with the information from Arcadia, and then sent the full set of documents to the Arcadian Ministers, asking them to make it immediately available to all their people, and particularly to their farmers.

The experts who had carried out the Fantasian part of the EIA had identified one step they thought might meet many of the Arcadians' concerns. They suggested a bypass channel round the barrage, which would allow some of the Styx's water to flow round the barrage rather than through it. The river level would still rise, especially in winter, but much less than under the original plan. And they were able to point to one definite advantage: the higher level of the Styx and its tributaries, the greater the possibility of the tourists reaching some of the Arcadian antiquities, till now accessible only over a very poor road, in the comfort of river cruisers. This additional information was shared by the Arcadian Government with its people, again at Fantasian expense.

The Arcadians were grudgingly won over, and the Fantasian Minister gave the final go-ahead. The barrage was built with the safeguards agreed beforehand and Arcadia learned to live with it. The Arcadians—and the Fantasians themselves—also learned that the ingrained habits of mistrust acquired in the past do not have to determine the future. And to this day both countries cooperate in monitoring the barrage's actual effects.



What your rights are

As you will have noticed in the above example, if the Convention applies, the public in the affected country has certain rights:

- ▶ To information
- ▶ To comment and object
- ▶ To participate in hearings
- ▶ To be heard

Each of these is described below. These rights are connected in particular with one or two documents to be issued in the procedure: the notification (article 3 of the Convention), and the EIA documentation (article 4 of the Convention). Whether rights are fulfilled in one or two procedural steps, corresponding to the issuing of these documents, depends on the national EIA system.

So that you can exercise these rights, your government and the government of the country of origin have certain responsibilities, as outlined overleaf.



Responsibilities of your government and the country of origin.

The country of origin must provide an opportunity to the public in the areas likely to be affected to participate in relevant EIA procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected country is equivalent to that provided to the public of the country of origin.

The concerned countries—the country of origin and the affected country—must ensure that the public of the affected country in the areas likely to be affected are informed of and provided with possibilities:

- (a) for making comments on or objections to the proposed activity;
- (b) for the transmittal of these comments or objections to the competent authority of the country of origin, either directly to this authority or, where appropriate, through the country of origin.

The concerned countries must also arrange for distribution of the EIA 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.

If you are aware of a proposed activity in another country that may affect your environment, contact your local authorities or environmental inspectorate to find out whether the Convention is being applied and, if not, why.

Your right to information

When being notified, or once it has indicated its wish to participate in the EIA procedure, your government receives information from the country of origin on:

- ▶ The proposed activity, and its possible significant adverse transboundary impact
- ▶ The nature of the possible decision (a land- use or construction permit, for example)
- ▶ The EIA procedure, including a time schedule for the transmittal of comments

This information must be shared with the public of the affected country in areas likely to be affected.

Once the EIA documentation has been prepared by the project proponent, this too, is sent to your government. The minimum content of the documentation is described in the Convention. Most importantly, it must include a non-technical summary that summarizes the entire documentation without jargon or complications and is understandable by an informed layperson.

Because the Convention obliges countries to provide the same opportunities to the public in the affected country as in the country of origin:

- ▶ Sufficient information must be made available in your language—at least a description of the proposed activity and the non-technical summary from the EIA. The full EIA documentation should also be available, though perhaps not all in your language.

Reasonable efforts must be made to ensure that you are aware of the planned activity and of your rights to the information and your rights to comment or object.

There should be no charges at any stage, except perhaps for reasonable costs, for example, for photocopying.

Once the final decision has been taken on the planned activity, the decision, along with the reasons and considerations on which it was based, must be sent to your government. Whether and how your government shares this information with you will depend on your national laws on access to information; this is obligatory within the European Union.

Your right to comment and object

You can make comments on or objections to the proposed activity at least on the second of two occasions: following notification and following preparation of the EIA documentation. You must be given sufficient time to examine the information, and you must be told how to submit your comments or objections, for example, to your government or to the project proponent.

Again, because the Convention obliges countries to provide the same opportunities to the public in the affected country as in the country of origin, you can make comments or objections in your language. Normally there is no fee payable.

Your right to participate in hearings

Often, your government or the government of the country of origin will organize a public hearing. If the hearing is held in your country, naturally it will be conducted in your language. If the hearing is in another country, you might ask for assistance with interpretation. You might also need to organize a visa.

You should be informed sufficiently in advance of the date of a public hearing.

Your right to be heard

When the authorities in the country of origin take the final decision on the planned activity, they must take “due account” of your comments, as well as comments made by your government and the outcome of the EIA. This means that the authorities must consider seriously the substance of all comments received, regardless of their source. Again, because the Convention obliges countries to provide the same opportunities to the public in the affected country as in the country of origin, the authorities in the country of origin must consider equally your comments and comments made by the public in their country.

Your government can also use your comments in its consultations with the government of the country of origin.

Disclaimer: The above description of rights is intended only as a guide. The legal obligations of Parties are those set out in the provisions of the Convention.

What to do if things go wrong

If the procedure under the Espoo Convention goes wrong, you should first tell your local authorities or government about the problem. It may be helpful to express your concerns in the terms used in the Convention or in your national laws.



Ultimately, if the problem remains, you can contact the secretariat of the Convention, which will in turn inform the Convention Implementation Committee. The Implementation Committee reviews Parties' compliance with their obligations under the Convention with a view to assisting them fully in

meeting their commitments. Members of the public or environmental non-governmental organizations may submit information to the Committee if they believe that a Party has failed to meet its obligations under the Convention. The Committee has developed a special form to streamline the sending of information. A person or organization with relevant information simply completes the form, which is available on the Convention website, and sends it by post or e-mail to the Convention secretariat. The secretariat then forwards the information to the Committee for its consideration, though the Committee may not have the time to consider all the information it receives. It is important to be precise about which activity—for example, one of those listed on the next page—is of concern, why you believe that it is likely to have a significant adverse transboundary impact and what is not happening according to the Convention.

- 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* (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* and lines for long-distance railway traffic and of airports* 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).

This list of activities is appendix I to the Convention as amended in 2004. The amendment has not yet come into effect, but many governments apply the amended list or their own extended list, whereas others apply the original list. The appendix explains the terms marked with an *.

Parties to the Convention

Albania	Kyrgyzstan
Armenia	Latvia
Austria	Liechtenstein
Azerbaijan	Lithuania
Belarus	Luxembourg
Belgium	Montenegro
Bosnia and Herzegovina	Netherlands
Bulgaria	Norway
Canada	Poland
Croatia	Portugal
Cyprus	Republic of Moldova
Czech Republic	Romania
Denmark	Serbia
Estonia	Slovakia
European Union	Slovenia
Finland	Spain
France	Sweden
Germany	Switzerland
Greece	The former Yugoslav Republic of Macedonia
Hungary	Ukraine
Ireland	United Kingdom of Great Britain and Northern Ireland
Italy	
Kazakhstan	

The above list was correct on 1 July 2010. For the current list of countries that are party to the Convention, check the status of ratification on the Convention website: www.unece.org/env/eia.