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Fourth review of implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (2010-2012)

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Note

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Preface

The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) was adopted in Espoo, Finland, on 25 February 1991 and entered into force on 10 September 1997. By 2014 there were 45 Parties to the Espoo Convention, including the European Union, as identified on the Convention's website (http://www.unece.org/env/eia). In 2001, the Parties adopted an amendment to the Convention allowing non-UNECE member States to become Parties. In 2004, the Parties adopted a second amendment revising, inter alia, the list of activities in Appendix I, requiring review of compliance procedures and introducing regular reporting.

The Espoo Convention is intended to help make development sustainable by promoting international cooperation in assessing the likely impact of a proposed activity on the environment. It applies, in particular, to activities that could damage the environment in other countries. Ultimately, the Espoo Convention is aimed at preventing, mitigating and monitoring such environmental damage.

The Espoo Convention ensures that explicit consideration is given to environmental factors well before the final decision is taken on activities with potential environmental impacts. It also ensures that the people living in areas likely to be affected by an adverse impact are informed of the proposed activity. It provides an opportunity for these people to make comments or raise objections to the proposed activity and to participate in relevant environmental impact assessment procedures. It also ensures that the comments and objections made are transmitted to the competent authority and are taken into account in the final decision.

Since it was first decided by the Meeting of the Parties to the Convention that a review of the implementation of the Convention should be undertaken (MP.EIA/2001/11, annex), four reviews have been carried out, adopted by the Meeting of the Parties and published (ECE/MP.EIA/6; ECE/MP.EIA/11; ECE/MP.EIA/16; ECE/MP.EIA/23). The sixth review of implementation will be carried out in 2015-2016.

A Protocol on Strategic Environmental Assessment to the Espoo Convention was adopted on 21 May 2003 and entered into force on 11 July 2010; by 2014 it had 26 Parties, including the European Union. It applies the principles of the Espoo Convention to plans, programmes, policies and legislation, but with a focus on the national impact assessment procedures.

At its second session, in 2001, the Meeting of the Parties to the Convention decided to undertake a review of the implementation of the Convention. The review was undertaken on the basis of responses to a questionnaire circulated to all member States of the United Nations Economic Commission for Europe. At is third session, in 2004, the Meeting of the Parties adopted its first Review of Implementation (2003). It also decided to repeat the exercise, and so requested Parties to complete a revised and simplified questionnaire. The second Review of Implementation (2003–2005) was adopted by the Meeting at its fourth session (2008), and the third Review of Implementation (2006–2009) was adopted by the Meeting at its fifth session (2011).

At its sixth session, in 2014, the Meeting of the Parties, while regretting that seven Parties had not responded to the revised questionnaire on time, welcomed the reports by the Parties on their implementation, and adopted the Fourth Review of Implementation, as presented in this publication (the draft review of implementation is available as official document ECE/MP.EIA/2014/3). It also noted its findings (presented in section I.B. of the Review) and agreed again to repeat the review of implementation exercise for the seventh session of the Meeting of the Parties.

The Meeting of the Parties requested the Convention's Implementation Committee to take into account in its work general and specific compliance issues identified in this Fourth Review of Implementation. The Committee is responsible for the review of compliance by Parties with their obligations under the Convention. However, besides its importance to the Implementation Committee, this Review provides valuable information for Parties wishing to strengthen their implementation of the Convention, for States considering acceding to the Convention in their legal and administrative preparations, and for others wishing to understand better how the Convention is implemented in national legislation and applied in practice.

Contents

I. Introduction

The present document contains the Fourth Review of the Implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). It examines responses to a questionnaire on countries' implementation of the Convention in the period 2010–2012.

This chapter describes the preparation of the review and the major findings. Chapter II below summarizes the responses to the questionnaire regarding the legal, administrative and other measures taken by Parties to implement the Convention, as well as their practical experiences of applying the Convention.

Due to length limitations for the review, the responses by Parties to questions concerning their domestic environmental impact assessment (EIA) procedures have not been included. Moreover, the review does not include the lists of transboundary cases in 2010–2012 provided by Parties, which can be accessed from the Convention website[1]. Finally, the suggested improvements to the review that were provided by some Parties have been submitted directly to the Implementation Committee under the Convention and its Protocol on Strategic Environmental Assessment (Protocol on SEA) to inform its work for the development of the subsequent questionnaires on implementation.

A. Preparation of the review

The Fourth Review of Implementation was prepared in line with the workplan adopted by the Meeting of the Parties to the Convention at its fifth session. (ECE/MP.EIA/SEA/2, decision V/9–I/9). Parties reported on their implementation by means of a questionnaire produced by the Implementation Committee under the Convention and its Protocol and approved by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment. Based on the completed questionnaires, the secretariat, with the assistance of a consultant, prepared the draft review for consideration by the Working Group and subsequently for adoption by the Meeting of the Parties to the Convention at its sixth session. The review was adopted as set out in this document.

Completed questionnaires were received by 7 June 2013 from 38[2] of the 44 States Parties to the Convention. They are available on the Convention website, and are reflected in this review.

At the time of writing, Bosnia and Herzegovina, Greece, Ireland, Luxembourg, Portugal and the United Kingdom of Great Britain and Northern Ireland had not submitted a completed questionnaire. The European Union (EU) is a Party to the Convention, but, being a regional economic integration organization, felt it inappropriate to report.

[1] See http://www.unece.org/env/eia/.

[2] Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Malta, Montenegro, Netherlands, Norway, Poland, Republic of Moldova, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia and Ukraine.

B. Findings of the review

An analysis of the national reports revealed a continuous increase in the application of the Convention and, to a lesser extent, in the development of bilateral and multilateral agreements to support its implementation. However, the analysis also identified the following possible weaknesses or shortcomings in the Convention's implementation by Parties:

- A frequent lack of definition of several terms used in the Convention, such as "promptly", "due account" or "reasonably obtainable";
- A failure by some Parties to recognize that, in accordance with article 3, paragraph 8, and article 4, paragraph 2, the "concerned Parties" are both responsible for ensuring opportunities for public participation;
- A failure to recognize that article 5 provides for transboundary consultations distinct from article 4, paragraph 2;
- A frequent lack of definition of the "final decision" (art. 6) and of specification of its required content;
- A lack of experience in carrying out post-project analysis (art. 7);
- A continuing need for bilateral and multilateral agreements or other arrangements, particularly to address differences between Parties in: the content of the notification; language; time frames; how to proceed when there is no response to a notification or if there is disagreement about the need for notification; the interpretation of various terms (such as "due account", "promptly", "reasonably obtainable", etc.); and the requirement for post-project analysis;
- Confusion among the Parties about the respective functions of the point of contact for notification and the focal point for administrative matters;
- A continuing need to further improve awareness of and capacity in the implementation of the Convention's obligations by the competent authorities at the national and regional levels, experts and practitioners on EIA, civil society, investors and academics.

II. Summary of responses to the questionnaire

The numbers indicated in italics within parentheses in this document refer to the questionnaire on the implementation of the Convention, e.g. "(24)" refers to question 24 in the questionnaire.

A. Article 2: General provisions

All respondents listed the general legal, administrative and other measures taken in their country to implement the provisions of the Convention (art. 2, para. 2) (*1 and 2*). A few Parties also reported on further measures under way or planned: Armenia and Azerbaijan referred to their draft laws; Albania planned to introduce new legislation in 2013; and Norway and Kazakhstan were in the process of amending their implementing legislation.

In most Parties, the authority responsible for implementing the EIA procedures in a transboundary context (3) was the environment ministry, frequently, in cooperation with the ministry of foreign affairs (e.g., in Croatia, Cyprus, the Czech Republic, Italy, Latvia, Malta, Montenegro, Spain and the former Yugoslav Republic of Macedonia,).

In several Parties, such as Austria, the Czech Republic, France, Germany Lithuania, the Netherlands, Romania, Serbia, Slovakia, Sweden and Switzerland, either regional or local government bodies were responsible for the national EIA procedures. In many instances the competent authorities at the regional level were also responsible for conducting the steps in the transboundary EIA procedure subsequent to notification.

In most Parties, the environmental authority was responsible for collecting information on all transboundary EIAs. However, some of them (e.g., Belgium, Germany, the Netherlands and Norway) reported that they did not have a designated authority for this purpose (4).

The majority of Parties had no special provisions on transboundary EIA procedures for joint cross-border projects (5). Exceptions were Bulgaria, where EIA documentation was prepared by a joint team of experts; Canada and the Czech Republic, which referred to their legislation; and Estonia and Finland, which referred to their bilateral agreement. Estonia also referred to its bilateral agreement with Latvia in this regard. Others, such as Denmark and Sweden, reported that such procedures were assessed on a case-by-case basis.

B. Identification of a proposed activity requiring environmental impact assessment under the Convention

The vast majority of respondents reported that their national legislation already covered, or went beyond, the revised appendix I (*6 and 7*) to the Convention in the second amendment (ECE/MP.EIA/6, decision III/7). Switzerland had excluded some activities which did not occur on its territory and Ukraine noted that some activities, such as deforestation of large areas, overhead electrical power lines with a voltage of

220 kilovolts or more and a length of more than 15 kilometres and wind farms, were not included in its legislation.

Liechtenstein and the Republic of Moldova both indicated that, since the previous reporting round, they had transposed the revised appendix I to the Convention into their respective national legislation.

C. Public participation

Parties described how their country, as Party of origin, ensured, together with the affected Party, that the opportunity given to the public of the affected Party was equivalent to the one given to their own public, as required in article 2, paragraph 6 (8). Most responding Parties indicated that they provided the relevant information and documentation to the affected Party as early as possible, e.g., in the scoping phase. Some Parties (e.g., Austria) specified that the documentation was accompanied with detailed information about the rights of the public of the affected Parties to participate. Some Parties would, in addition, specifically request the affected Party to make the information available for its public to comment (e.g., the Czech Republic). In many cases, the information was provided both in paper and electronic formats and posted on the Internet. Some Parties, such as Lithuania, Romania and Slovenia, reported that if the affected Party informed them about a forthcoming public hearing, the project developer would propose attending it to present information on the project and its environmental impacts. Some Parties also indicated that they facilitated participation of the affected Party's public by offering support in arranging public participation, as needed (e.g., Finland), or by translating the notification into the language of the affected Party (e.g., Belarus, Belgium, the Netherlands and Ukraine). Some respondents (e.g., Croatia) also stressed that the comments from the affected Party's public were given the same consideration as those from their own public.

Nevertheless, many respondents noted that aside from providing the necessary information and, in some cases, the possible further support to the affected Party, it was primarily the responsibility of the affected Party to organize its own public participation.

D. Article 3: Notification

1. Questions to the Party of origin

Respondents described how their country, as Party of origin, determined when to notify the affected Party, which was to occur, "as early as possible and no later than when informing its own public" (art. 3, para. 1), and at what stage of the EIA procedure this took place (9 and 10 (a)). Many Parties (e.g., Finland, Germany, Hungary, Lithuania, Norway, Poland, Spain, Sweden and Switzerland) reported that notification already took place in the scoping phase, if possible. In a number of Parties, it could occur even earlier, during or as a result of screening (e.g., Croatia, the Czech Republic, Denmark, the Netherlands and the former Yugoslav Republic of Macedonia). In some other Parties (e.g., France), notification took place after the receipt of the EIA documentation by the competent authority.

Nearly half of the Parties used the format for the notification as decided by the Meeting of the Parties (ECE/MP.EIA/2, decision I/4). The others used formats that

were generally consistent with this format and which, at any event, covered the requirements in article 3, paragraph 2. Austria, for instance, provided all the information required by the Convention in a cover letter. In Finland, this was included in a cover letter and in the accompanying scoping documentation. Italy provided a non-technical synthesis of the project in the notification (10 (b)).

Belarus noted that the information it provided to the affected Party included a description of the type and scope of the activity, its objectives, proposed location and the timing for its implementation, as well as information on the EIA procedure, including the proposed timing for the public hearings and consultations, the nature of possible decisions on the proposed activity and information on the developer.

Parties reported on how they determined the time frame for the response to the notification from the affected Party (art. 3, para. 3) (10 (c)). Several Parties did this on a case-by-case basis, depending on the activity in question. Some Parties (e.g., Belarus and Estonia) referred to the relevant provisions included in their bilateral agreements. Many others based the time frame on their national legislation. The reported time frames ranged from two weeks to three months, with an average of about a month.

Should the time frame not be respected by the affected Party, most Parties would either call or send a written reminder to the point of contact for notification of the affected Party. Some Parties (e.g., Albania, Cyprus, Lithuania, Montenegro and Republic of Moldova) assumed in the absence of a response that the affected Party did not wish to participate in the procedure. Many Parties (e.g., Austria, Belgium) reported on their flexibility in extending deadlines when the affected Party requested it.

Parties reported that, as the Party of origin, they would request information from the affected Party if this was necessary for the preparation of the EIA documentation, (art. 3, para. 6) (*10 (d)*). In many Parties (e.g., Austria, Belgium, Cyprus, Finland, Germany, Italy, Lithuania, Poland, Switzerland and Ukraine) this was not specified in the legislation. Exceptions included Malta, the Republic of Moldova, Romania, Slovakia, Slovenia and the former Yugoslav Republic of Macedonia, which referred to their legislation, and the Netherlands, which referred to its bilateral agreements with Belgium and Germany. The timing of the request varied: with the notification (e.g., Belarus, Finland, Hungary and Lithuania); upon receipt of a positive response (e.g., the Czech Republic); during scoping (Romania, Slovakia); or during the preparation of the EIA documentation (e.g., Estonia).

Parties reported on how they cooperated with the authorities of the affected Party on public participation in line with article 3, paragraph 8 (*10 (e)*). Many respondents noted that it was for the authorities of the affected Party to inform its public (e.g., Austria, Belgium, Finland, Serbia and Slovakia). Some Parties referred to bilateral agreements (e.g., Belarus, Estonia and Finland) and others to case-by-case determination of the responsibilities (e.g., Albania, Italy and Poland).

Hungary, Poland, Romania and Ukraine highlighted that they provided the information in English and/or in the language of the affected Party.

In almost all cases, respondents indicated that, as the Parties of origin, they expected the notification to the public of the affected Party to have the same content as that to their own public, and to be based on the information they provided. However, many respondents again noted that the notification and the determination of the contents of the notification were the responsibility of the affected Party (*10 (f)*). Some Parties (e.g., Sweden) reported that when translation was needed, often only a summary of the information was translated (*10 (h)*).

The vast majority of Parties made use of the points of contact for the purposes of notification, in accordance with decision I/3 (*11*), and as listed on the Convention website[3]. The Netherlands noted that for projects involving Germany and Belgium it used contact points identified under the respective bilateral agreements. Germany, Poland and Spain also referred to bilateral agreements that sometimes specified alternative points of contact.

Parties also described when and how, as Party of origin, they notified their own public and the content of the public notification (10 (g)).

2. Questions to the affected Party

Whether, as affected Party, to participate in the EIA procedure (art. 3, para. 3) (12 (a)) was decided by most Parties case by case, based on the examination of criteria such as the nature of the activity, the likely extent of the transboundary impacts and the territory likely to be affected. Most Parties would consult relevant authorities at the national, regional and local levels and other relevant experts. In some Parties (e.g., Denmark, Finland and Hungary), the public was also consulted beforehand and a decision to participate or not in the EIA procedure also took into account the public's opinion.

Some Parties (such as Germany, the Netherlands and Poland) noted that they had no legal provisions regarding the obligation to provide, at a request of the Party of origin, information on the potentially affected environment necessary for the preparation of the EIA documentation (art. 3, para. 6) (12 (b)). For many respondents, the definition of the terms "reasonably obtainable" and "promptly" in this context were subject to interpretation. Croatia and Montenegro specified, for example, that "reasonably obtainable" information was information that was already, or readily, available. Some Parties, e.g., Denmark and Latvia, suggested that "promptly" signified "as soon as possible" or without "undue delay"; several others, e.g., Lithuania, specified that the information was sent within a month, or within 45 days, as in the Republic of Moldova. The Netherlands referred to its bilateral agreements with Belgium and Germany.

Several respondents noted that, as affected Parties, they cooperated closely with the authorities of the Party of origin on public participation, e.g., in the holding of public hearings, as needed (Denmark, Hungary, Slovakia and Sweden) (art. 3, para. 8) (*12 (c)*).

Respondents explained when and how, as affected Parties, their public was notified (*12 (d)*). Most Parties indicated announcements via national and local newspapers, websites of the competent national and/or local authorities and local public billboards. In Belarus, the Environment Ministry published the EIA documentation on its website within three working days after having received it from the Party of origin. Denmark, Estonia, Finland, Germany, Hungary and Ukraine, among others, reported that their public was informed "without delay", while in Norway this was done within two weeks of receiving notification from the Party of origin. Kazakhstan reported that the public was informed via the media 20 days before the date of the public hearing. Cyprus noted that it had no such provisions in its legislation.

[3] See http://www.unece.org/env/eia/points_of_contact.html.

E. Article 4: Preparation of the environmental impact assessment documentation

1. Questions to the Party of origin

Several Parties (Croatia, the Czech Republic, Denmark, Germany, Italy, Kazakhstan, Kyrgyzstan, Poland, the Republic of Moldova, Romania and Slovakia) noted that their legislation was in line with article 4, paragraph 1, and appendix II concerning the requirements for the minimum content of the EIA documentation (*13 (a)*). Other Parties described their legal requirements in more detail, indicating their consistency with appendix II. Armenia and Azerbaijan currently lacked such legal requirements, but noted that they would be included in their new draft legislation.

In the majority of Parties, the competent authority determined the content of the EIA documentation on a case-by-case basis (scoping procedure) (art. 4, para. 1) depending on the type of project and often based on set criteria (*13 (b)*). Additional input was frequently sought from other relevant authorities and experts, environmental bodies and, in some cases (e.g., Croatia, the Czech Republic, Estonia, Finland, Hungary and the Netherlands) from the public and possibly also from non-governmental organizations (NGOs) (Spain), to finalize the scoping procedure. Canada would also take comments from NGOs into consideration. In some Parties (e.g., Austria, Bulgaria, Estonia, Finland, Lithuania, Norway and Switzerland), the proponent, or its EIA experts, prepared or drafted a scoping report.

Several Parties reported that it was up to the developer (the proponent) to identify and describe, where appropriate, reasonable alternatives (for example, locational or technological) to the proposed activity, including the no-action alternative, in line with appendix II, paragraph (b) (*13 (c)*). In Finland, the competent authority was responsible for identifying the alternatives to be assessed based on the proposal by the developer and the comments provided by other authorities, NGOs, the public and the affected Party. Many respondents, (e.g., Austria, Denmark, Estonia, Finland, Germany and Slovakia) noted that this was done on a case-by-case basis, taking into account the type of project, its location, size, management arrangements, production methods and technologies and time frame. In Kazakhstan, the technological, social, planning and economic aspects had to be considered. Some Parties (e.g., the Czech Republic, Estonia, Finland, Italy, Kyrgyzstan and the former Yugoslav Republic of Macedonia) also highlighted that the no-action alternative should be considered.

Most Parties provided a separate chapter on transboundary impacts in the EIA documentation and generally the type of information to be included was determined on the basis of the activity proposed and its potential impacts. There was general agreement that this ensured greater clarity and understanding of transboundary impacts (29 (a)).

Parties described or quoted their legislation regarding the provision of the EIA documentation to the national authorities and the public (13 (d)).

As to the legal requirements, procedures and format for providing EIA documentation to the affected Party (art. 4, para. 2) (13 (e)), a number of respondents, including Austria, Belarus, Finland and Kyrgyzstan, indicated that official or diplomatic channels were used. The documentation was generally transmitted in both paper and electronic formats. Several Parties (e.g., Germany, Hungary, Spain and Ukraine) noted that they translated either the full documentation or at least its non-technical summary. Half of the responding Parties noted that there was no difference between the documentation provided domestically and that provided to the affected Party. The documentation was generally transmitted in both paper and electronic formats.

Several Parties (e.g., Germany, Hungary, Spain and Ukraine) noted that they translated either the full documentation or at least its non-technical summary.

A number of respondents, notably Belgium and Canada, noted that the proponent could request that certain parts of the project remain private or confidential.

Respondents detailed the procedures for the examination of and deadlines for comments on the EIA documentation both domestically and in the transboundary context (13 (f) and (g)). The time frame would generally vary between one and three months. Most commonly, a 30-day deadline was provided both for national comments and for those from the affected Party. Canada noted that deadlines were similar for comments from both the domestic and the affected Party's public, with specific deadlines defined on a case-by-case basis. Belarus referred to its draft bilateral agreements with Lithuania, Poland and Ukraine, and Estonia referred to its bilateral agreement with Finland.

Respondents also reported on how the national comments and those received from the affected Party were addressed (art. 4, para. 2). The competent authority was generally responsible for considering the comments and taking them into account in the final decision. A number of Parties also, or instead, sent the comments to the proponent for incorporation into the EIA documentation (Belarus, Hungary and the Republic of Moldova).

Respondents described the legal requirements and procedures for public hearings domestically and in the affected Party (13 (h) and (i) and 29 (c)). Several Parties noted that, as the Party of origin, they had no means of influencing the jurisdiction of the affected Party regarding public hearings to be held in their territory. For a majority of responding Parties, hearings in their country were open to participation by the public from the affected Party. Sweden, as a rule, attempted to invite the public from both Parties to the same hearing, arranging for interpretation if necessary. The Netherlands noted that when it expected a large participation of the public from the affected party at its public hearing, e.g., from Germany, an interpreter would be hired for the occasion.

Several Parties (e.g., Austria, Bulgaria Croatia, Denmark, Finland, Germany, the Netherlands, Norway, Romania, Serbia and Ukraine) might also initiate a public hearing in the affected Party or organize one when requested. The need for this would be determined on a case-by-case basis by the concerned Parties, together with the procedures to be followed, which could also be set out in bilateral agreements.

2. Questions to the affected Party

Parties described their legal requirements with respect to procedures and deadlines for comments on the EIA documentation to be submitted to the Party of origin (14 (a)). Most commonly, once the competent authority in the affected Party received the EIA documentation from the Party of origin, it disseminated it to all relevant authorities at the central and local levels and to the public (generally publishing it also on its website) and was also responsible for collating all responses received and providing them back to the Party of origin.

Most Parties indicated that the deadline for comments on the EIA documentation was defined by the Party of origin. Norway noted that this was set on a case-by-case basis together with the Party of origin. Spain reported that for bilateral projects in which Portugal was the Party of origin, a "Collaboration Protocol" set a time limit of three months for comments and that a similar time limit would also apply in other cases, although not formally provided for.

Armenia, Azerbaijan, Liechtenstein, Malta and Ukraine noted that they currently did not have legal provisions regarding comments on the EIA documentation, but these were envisaged in the new Armenian draft legislation.

Respondents outlined their legislation concerning procedures and deadlines for public participation nationally in the review of the EIA documentation provided by the Party of origin, and the authorities responsible for these procedures (14 (b)). Lithuania noted that in its bilateral agreement with Poland, public participation was organized according to the affected Party's legislation. The Netherlands also referred to its bilateral agreements with Belgium and Germany whereby the affected Party assisted the Party of origin in organizing public participation in the affected Party. In Austria, the local authority collected all the comments received from the public and any additional information and sent it to the Party of origin. In Hungary, the competent authority organized a public forum, notified the public and invited representatives from both the developer and experts. In Kazakhstan, public participation was organized by the local executive authorities.

Parties described their legal requirements regarding procedures for the examination of the EIA documentation domestically, as affected Parties (14 (c)). In most cases, the competent authority was responsible for collecting the various inputs from the relevant authorities, experts and the public and providing the Party of origin with comments. For example, in Romania, the competent authority submitted the notification, the scoping document and the EIA documentation for comments to its public via the Internet, translating the documents into Romanian, as needed, and organized a public hearing where the Party of origin was invited to present the project and its likely impact. At the end of the consultation period, Romania, as the affected Party, would send the Party of origin, in written format, the public's concerns. In Finland, the competent authority would usually also submit a summary statement of the collected comments it sent to the Party of origin.

F. Article 5: Consultations

1. Questions to the Party of origin

Parties reported on the stages, procedures and deadlines for consultations under article 5 with the affected Party (15 (a) and (b) and 29 (d)), indicating in general that the consultations took place after the documentation had been made available to the affected Party. Germany noted that, notwithstanding the requirement in article 5 to enter into consultations "without undue delay", in practice it had proven to be more appropriate to do this only after the affected Party had given its comments on the EIA documentation and the Party of origin had had enough time to assess them. Some Parties (e.g., Austria and Serbia) noted that consultations might occur at any stage during the transboundary EIA procedure France, Norway, Switzerland and Ukraine reported that they did not have legal provisions for consultations with the affected Party. Belarus, Estonia and Spain noted that the consultation procedure was defined in their respective bilateral agreements.

In many Parties consultations took place at the national level, but might first be held at the expert level (e.g., Belgium, Denmark and the Netherlands). For the purpose of consultations, Parties held meetings (e.g., Hungary and Lithuania) or exchanged written communications (e.g., Latvia and Romania). In several cases (such as Bulgaria, Germany, Hungary, Kazakhstan, the Republic of Moldova and Serbia), both took place. In addition to the competent authorities, and often also other relevant national and local authorities, from the concerned Parties, the consultations

could involve the proponent (e.g., Austria, Finland), experts (e.g., Denmark, Montenegro and Switzerland) and the public (Bulgaria, Serbia and Slovakia).

In some cases (Estonia, Germany and Latvia) the duration of the consultation period was agreed jointly between both Parties on a case-by-case basis. Others reported consultation periods of 30 days (Cyprus), eight weeks (Romania), three months (Estonia — in its bilateral agreement with Finland — and Spain) and six months (Estonia in its bilateral agreement with Latvia).

2. Questions to the affected Party

Most Parties, as affected Parties, did not have specific legal requirements on procedures for interaction with the Party of origin regarding consultations (16 (a)), with the exception of Albania, Bulgaria, Germany, the Republic of Moldova and the former Yugoslav Republic of Macedonia, which referred to their legislation. Some Parties (e.g., Belarus, Estonia and the Netherlands) referred to bilateral agreements, or to their drafts.

The stages, procedures and deadlines for domestic consultations described by Parties as affected Parties (16 (b)) were similar to the arrangements they had outlined as Parties of origin.

3. Questions to the concerned Parties

Many Parties reported that they were not aware of any significant difficulties during consultations under article 5. A number of them, as affected Parties, considered that the consultations had supported the prevention, reduction and control of significant transboundary environmental impacts.

However, several other Parties had encountered difficulties either as a Party of origin or as an affected Party during consultations (29 (d)). For the affected Parties, these included: lack or poor quality of translation of both technical and non-technical documentation; a need for additional information; and time constraints, in particular, insufficient time to submit comments (Estonia and Latvia). For the Parties of origin, excessive extensions of the duration of the consultations and delays caused in the transboundary procedure (and in the investment decisions) were described as difficult (e.g., Poland, Slovakia and Slovenia). Other difficulties identified included: the different technical competence of stakeholders taking part in consultations from both Parties; and differences in the binding (or non-binding) nature of consultation outcomes depending on the Party (Poland).

G. Article 6: Final decision

Parties reported on how they defined a “final decision” for the implementation of the planned activity (art. 6), the content of the decision and procedures for their adoption (17 (a) and 29 (e)). For several respondents (e.g., Austria, Belgium, Croatia, Denmark, Estonia, Finland, Germany and Romania) the EIA was integrated into the permitting or “development consent” procedure, the “final decision” being a decision to deliver a “permit” (e.g., a building or construction permit) or a ”development consent” authorizing (the proponent) to proceed with a proposed activity. In Norway and Switzerland, for some activities, the authorization to proceed required several decisions, the last of which was considered “final”.

In contrast, for some respondents the final decision was a separate environmental decision, or a statement, based on the EIA procedure, which was a precondition for

applying for a permit or development consent (e.g., Lithuania, Poland, Serbia, Slovakia and Slovenia).

In Albania a final decision was "an environmental statement" issued by the environment minister, which would serve as a guiding document for the planning authority and/or any other relevant responsible authority to deliver a permit. For Armenia, among countries with a system of State ecological expertise, the final decision was an approval given only based on a positive "expert conclusion" issued by the competent authority. Ukraine's legislation had no definition for a "final decision", but, in practice, the permit for the construction work was considered as a final decision. Belarus also reported that it did not have a definition for "final decision" or any legal requirements for its content, but that a decision on permitting the construction of the planned activity was understood as a "final decision". This was commonly delivered by the relevant local authority or, in the case of nuclear power plants, by the president, and, for other nuclear energy-related installations, storage facilities or waste repositories, by the Council of Ministers.

Parties provided examples of the form, content and language of the final decision (29 (e)). Regarding the form, most Parties indicated in general that it complied with the requirements set out in article 6, paragraph 1. For most Parties the final decision contained the final statement of the competent authority, including reasons and considerations on which the decision was based, explaining how the EIA and the comments from the authorities and the public of the concerned Parties had been taken into account. Germany noted that the final decision should also contain information on the right of appeal.

Respondents identified what their country regarded as the "final decision" for each type of activity in appendix I. Parties were also asked to indicate whether all activities listed in appendix I required a final decision (17 (b)). For nearly all Parties that responded to the question this was the case. However, Sweden reported that almost all projects required a final decision and a number of Parties did not provide an answer (Albania, Armenia, Azerbaijan, Bulgaria, Canada, the Czech Republic, Germany, Italy, Kazakhstan, Liechtenstein, Switzerland, the former Yugoslav Republic of Macedonia and Ukraine).

Parties reported on their procedures for informing the public of the final decision nationally and for submitting it to the affected Party (17 (c)). In the majority of cases (e.g., Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Malta, Poland, Slovakia and Slovenia), the affected Party was informed via official channels by the environment ministry (or equivalent competent authority). In most cases the affected Party was provided with a copy of the final decision together with the reasons and considerations on which it was based. In addition, Parties would send information on any conditions attached, and a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.

Most Parties noted that the final decision was posted on their website (and/or public noticeboard) to provide information to their own public and sent to the affected Parties and to the proponent by mail and/or by e-mail. In some cases (for example, in Belarus, Belgium, Italy and the Netherlands) the final decision was published in an official newspaper.

Most Parties did not provide information regarding the translation of the final decision. Romania usually translated the final decision into English, and Ukraine into English or Russian, before transmitting it to the affected Party via diplomatic channels.

In a clear majority of Parties, the comments of the authorities and the public of the affected Party and the outcome of the consultations (art. 6, para. 1) (*17 (d)*) were taken into consideration in the same way as the comments from the authorities and the public in the Party of origin. Armenia noted that this would be required in its draft law and Canada noted that, although this was not required in its laws, it would be likely to give strong consideration to the comments received from the public and the authorities of the affected Party. Switzerland underlined that, while the Swiss public could, under certain conditions, appeal the decision, this right was not granted to the affected Party under the Convention.

Many respondents noted that they had not had to review a decision based on additional information that became available according to article 6, paragraph 3, before the implementation of an activity started (*17 (e)*), and therefore that they had no experience to report in this respect. In several cases, such as, for example, in Belarus, Hungary, Italy, Kazakhstan, Romania, Serbia, Slovenia and Ukraine, environmental legislation provided for the possibility of reviewing a final decision, if deemed necessary. Some Parties (e.g., the Czech Republic, Estonia, Germany, the Netherlands, Norway and Romania) noted that should additional information become available they would consult the affected Party once again to establish whether the decision had to be revised. Belgium noted that review of the decision was possible before and after implementation of the given activity. In Austria, the possibilities to revise a valid decision were strictly limited and, in Lithuania, once taken, the decision was final and only courts could repeal it. France noted that, for example, if new protected species were discovered on a project site before or even during the work, the relevant EU legislation provided for the suspension of the activity, an additional review and possible exemption.

H. Article 7: Post-project analysis

Parties that had legal requirements for a post-project analysis in line with article 7, paragraph 1 (18 (a)), included Albania, Austria, Belarus, Belgium, Bulgaria, Canada, the Czech Republic, Estonia, France, Germany, Italy, Kazakhstan, Malta, Montenegro, the Netherlands, Norway, Romania, Slovakia and Slovenia. In several other Parties the necessity for a post-project analysis was envisaged on a case-by-case basis (Armenia, Belgium (Flanders and Brussels Regions), Croatia, Denmark, Finland, Hungary, Poland and Switzerland).

Most respondents indicated that their country had not carried out post-project analyses, at least in the transboundary context (29 (f)). Others, such as Croatia, Denmark, Hungary, Kazakhstan, Norway, Poland, Romania, Spain and Sweden listed some examples of activities that had been subject to post-project analysis. Denmark, for example, had carried out post-project analyses for offshore wind farms, the bridge between Sweden and Denmark and the Nord Stream Gas Pipeline. In Kazakhstan, a post-project analysis was carried out on the reconstructed Taraz metallurgical plant to assess its level of emissions.

A few Parties indicated that information on the post-project evaluations of activities subject to the Convention was difficult to collect or to verify by the Parties in the absence of a national registration system (e.g., Germany and Netherlands).

Some Parties referred to specific legal requirements for informing the affected Party (art. 7, para. 2) of the results of post-project analyses (*18 (b)*) including Albania, Croatia, Cyprus, Denmark, Italy, Montenegro, the Netherlands, Poland, Romania and Spain. In other Parties, this was not provided for in the legislation, but would be

determined on a case-by-case basis. Some Parties, such as Estonia and Finland, referred to bilateral agreements.

A number of Parties, e.g., Croatia, Finland, the Netherlands and Montenegro, reported that the competent authority informed the affected Party of the results of post-project analyses through the points of contact, while, e.g., in Denmark and Italy, the information of the results from post-project analyses was made available on relevant websites.

I. Article 8: Bilateral or multilateral agreements

A number of Parties listed their bilateral or multilateral agreements based on the Convention (*19*) (Austria, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Slovakia, and Parties or signatories to the multilateral agreement among the countries of South-Eastern Europe for implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (Bucharest Agreement, 2008). Some were in the process of discussing draft bilateral agreements (i.e., Belarus, Belgium, the Netherlands and the Republic of Moldova). However, the majority of Parties reported that they had not established such agreements.

Most Parties had not established supplementary points of contact pursuant to bilateral or multilateral agreements (*20*) apart from Belgium with the Netherlands, and Germany with both the Netherlands and Poland. In the Netherlands, supplementary points of contact had also been established at the provincial level. Spain reported that a bilateral commission had been established with Portugal to implement the Albufeira Convention regulating the transboundary waters between the two countries.

J. Article 9: Research programmes

A few respondents (Austria, Belarus, Denmark, Germany, Kazakhstan, Romania and Slovakia) referred to specific research activities carried out in their countries in relation to the items mentioned in article 9 (*21*). Most other respondents were not aware of such research.

K. Ratification of the amendments to the Convention and of the Protocol on Strategic Environmental Assessment

Armenia, Denmark, Finland, Latvia, Malta, Republic of Moldova, Serbia and Slovenia indicated that they were planning to ratify both the first (*22*) and the second (*23*) amendments to the Convention shortly.

Azerbaijan, France, Latvia, Malta and the Republic of Moldova reported that they were planning to ratify the Protocol on SEA (*24*) shortly.

L. Cases during the period 2010–2012

A clear majority of respondents listed the transboundary EIA procedures that were under way during the period 2010–2012 (*25 and 26*), identifying for each whether their country was the Party of the origin or the affected Party. No responding Party objected to its list of transboundary EIA procedures being included in a compilation to be made available on the Convention website.

Several Parties responded that it was difficult to indicate an average duration (*27*) of transboundary EIA procedures, since the duration depended notably on the nature and complexity of the proposed activity, the time needed for preparation of the EIA documentation and the number of Parties involved. The estimated average durations provided by Parties ranged from two months (Denmark) to three and a half years (Latvia), with the majority of respondents reporting somewhere between nine months and two years.

M. Experience in the transboundary environmental impact assessment procedure in 2010–2012

For many respondents, the application of the Convention had supported the prevention, reduction or control of possible significant transboundary environmental impacts, had served to engage the public in the process, had ensured broader and better-informed consideration of environmental issues, had improved proposed activities and had enhanced transboundary collaboration (*28*). Some respondents noted, however, that it was difficult to attribute the improvements to the Convention.

The Czech Republic indicated that the transboundary EIA process with its neighbouring Parties had helped to ensure wider public participation and a wider scope of the environmental conditions considered, but that it had also burdened the administration and the project proponents. It referred to its cooperation with Slovakia as the best example because of the similarity of the languages and the legislation between the two countries. Both Hungary and the Netherlands provided examples where transboundary collaboration on the EIA procedure had helped to change the project location in order to preserve Natura 2000 sites. Spain provided an example of an oil refinery in Extremadura which had been granted a negative final decision based, notably, on comments by the affected Party (Portugal).

None of the respondents were willing to provide good practice cases in the form of a Convention "case study fact sheet" (*29 (h)*).

The need for and scope of translation (*29 (b)*) varied from case to case. Since the decision on what information was translated lay with the competent authority in the Party of origin, bilateral agreements between Parties were recommended to solve potential issues in this respect, such as poor quality of translation. Some good practices highlighted by respondents included:

- Translation of the whole preliminary EIA documentation into English or into the language of the affected Party (Hungary);
- Developers being held responsible for much of the translation (Hungary and Poland);
- Notification and official letters being prepared in the language of the affected Party by the competent authority (Poland).
- A few Parties provided information on successful examples of organizing transboundary EIA procedures for joint cross-border projects (29 (g)). For example:
- The Nabucco Gas Pipeline was highlighted by Bulgaria, Hungary and Romania as an example of good collaboration among the Convention focal points, the different Parties' EIA teams, the developer and the public;
- The Nord Stream Pipeline project was seen as a successful example of collaboration by Denmark, Germany and Sweden, although there were

challenges linked to the different legal systems in the nine concerned Parties involved;

- The Zlobin-Rupa Gas Pipeline (Croatia and Slovenia) was mentioned by Slovenia as a good example, since the process had been fast and the national contact points had worked together effectively;
- The Sezged combined-cycle gas turbine power plant was seen by Serbia as a good example of collaboration with Hungary;
- The use of joint bodies, such as intergovernmental commissions in transboundary projects between Italy and France.

Most Parties applied the Convention through their points of contact (29 (i)) (at least at the start), focal points and competent authorities. In some cases, joint bodies, bilateral and multilateral agreements were also involved.

Parties identified some difficulties in dealing with different legal systems of the other concerned Party or Parties (30). Austria, Estonia, Germany and Poland all noted that bilateral or trilateral agreements helped to overcome possible difficulties linked to different legal systems. Romania noted that bilateral cooperation might not be enough to overcome misunderstandings between the concerned Parties in cases where the differences between the legislative systems were important and the requirements of the Convention were not well understood. Several Parties (Austria, the Czech Republic, Estonia, France, Germany, Serbia and Slovenia) highlighted that close communication and cooperation between points of contact and focal points (before and during the EIA process) supported mutual understanding of the different legal systems (e.g., through regular annual or biennial meetings). Norway noted that meetings with relevant senior authorities in the early stages of the process were crucial to ensure coordination.

Parties provided information on their experience in using the guidance adopted by the Meeting of the Parties to the Convention (31 (a)–(c)), as follows:

- Guidance on public participation (ECE/MP.EIA/7) was used by several Parties, and in some cases the guidelines were already well known and applied entirely (Austria). The guidelines were used as a reference document to draw up bilateral agreements with other Parties (Republic of Moldova and the Netherlands); to inform national guidance (the Netherlands); for the development of EIA legislation (Republic of Moldova); and to better understand public participation procedures and inform project promoters (Romania and Slovenia). In Armenia, the guidance was translated and disseminated by the Government through the national Aarhus Centres. For Estonia, experiences gathered in different transboundary EIAs and cooperation between the concerned Parties remained the basis for applying the Convention (rather than the guidelines). Poland found it difficult to apply the guidance because other Parties were not familiar with it;
- Guidance on subregional cooperation (ECE/MP.EIA/6, annex V, appendix) was used by Denmark, Finland, Kyrgyzstan and Switzerland;
- Guidance on good practice and on bilateral and multilateral agreements (ECE/MP.EIA/6, annex IV, appendix) was used by Austria, Denmark, Finland, Germany, Norway, Slovenia and Switzerland.

Most Parties did not have major difficulties in implementing the procedures defined in the Convention (32), either as Party of origin or as affected Party. Others, such as Armenia and Romania, reported that they had had difficulties both as an affected Party and as a Party of origin. Armenia noted in this regard that the Convention

lacked mechanisms for cooperation among Parties in the presence of "exceptional circumstances". Austria reported that it had had some difficulty as an affected Party.

A number of Parties also identified provisions that were challenging to implement or unclear. These comments included: the entire Convention leaves scope for interpretation (Switzerland); provisions related to "due account" (art. 6, para. 1) and "reasonable alternatives" (appendix II, para. b) are not clear and subject to interpretation (Belarus); additional guidance is needed in exceptional circumstances (Armenia); the classification of activities with transboundary impacts (appendices I and III) and the meaning of "close to an international frontier" are unclear (Kyrgyzstan); there is a lack of clear provisions on the issue of translation of documents (Austria, Lithuania); it is unclear what information should be translated (Germany, Switzerland); provisions on formal bilateral agreements are missing (Belgium); there is no clear distinction between article 2, paragraph 6, article 3, paragraph 8, article 4, paragraph 2, and article 5 (the Netherlands and Switzerland); there is confusion on the interpretation of article 5 (Poland); there is a lack of clarity on what "reasonable time frames for consultations" are (Poland); it is unclear what "shared responsibility for organizing the public participation" entails (Netherlands); there is a need for separate guidance on article 2, paragraph 1 (Poland); there is no clear distinction between "directly to the competent authority of the Party of origin" and "through the Party of origin" (art. 3, para. 8) (Poland); the meaning of "final decision" is unclear (Romania); and there is a lack of clarity as to whether transboundary environmental impacts need to be assessed using the legal requirements of the Party of origin or those of the affected Party (Switzerland).

Most Parties had undertaken awareness-raising activities to promote the Convention among stakeholders (33), such as: round tables, workshops, public meetings and consultations with the public, local authorities, consultants, experts, academia and NGOs (Armenia, Austria, Republic of Moldova); bilateral meetings and workshops with neighbouring Parties on transboundary issues (Austria and Slovakia); subregional workshops on transboundary EIA and SEA (Azerbaijan); participation in regional trainings (Croatia); training programmes and workshops for government bodies, local authorities, NGOs and representatives of the public (Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Poland and Slovenia); production of information materials, manuals and practical guidance on the Convention and its application (Germany, Estonia, France, Latvia, Lithuania and the Netherlands); publication of information on the ministry of environment website (Estonia, Germany, Lithuania and the Netherlands); and establishment of a helpdesk on EIA and SEA-related questions (the Netherlands).

Fifteen Parties (Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Germany, Hungary, Italy, Latvia, Liechtenstein, the Netherlands, Spain and Sweden) indicated that they did not see a need to improve the application of the Convention (34) in their country, although some noted the need to improve its application by their neighbours. Others suggested areas for improvement included:

- Elaborating new bilateral agreements with neighbouring Parties (Belarus, Lithuania and Poland);
- Revising/adopting new national environmental legislation (Azerbaijan, Belarus, France, Kyrgyzstan, Malta, Norway, Slovakia and the former Yugoslav Republic of Macedonia);
- Raising awareness on the Convention and setting up a network of correspondents both at the central and regional levels (France);

- Communicating regularly with competent authorities on the legal and practical implications (the Netherlands and Switzerland);
- Regular seminars and trainings aimed at public institutions, consultants and experts, academics and investors (Slovenia).