

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.