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MEETING OF THE PARTIES TO THE CONVENTION
ON ENVIRONMENTAL IMPACT ASSESSMENT
IN A TRANSBOUNDARY CONTEXT

Fourth meeting
Bucharest, 19–21 May 2008
Item 8(a) of the provisional agenda

REVIEW OF THE WORK DONE BY THE WORKING GROUP ON ENVIRONMENTAL
IMPACT ASSESSMENT AND ADOPTION OF DECISIONS

REVIEW OF IMPLEMENTATION OF THE CONVENTION

A review of the legal and administrative framework for implementation of Articles 4 to 9

Note by the secretariat

Summary

The Meeting of the Parties to the Convention on Environmental Impact Assessment (EIA) in a Transboundary Context decided at its third meeting to adopt a workplan (decision III/9, in annex IX to ECE/MP.EIA/6) that included an activity on “Compliance with and implementation of the Convention”. The activity included the preparation of a revised and simplified questionnaire by the Implementation Committee with the support of the secretariat. This review summarizes responses to the revised questionnaire regarding the implementation of Articles 4 to 9 of the Convention during the period 2003–2005.

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INTRODUCTION

1. This review summarizes responses to the revised questionnaire regarding the implementation of Articles 4 to 9 of the Convention during the period 2003–2005. The questionnaire is described in the annex to decision IV/1. Responses to questions indicating a lack of experience have not been included in this review. The questions are indicated in italics.

I. ARTICLE 4: PREPARATION OF THE ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENTATION

A. Questions to the Party of Origin

Question 17. What is the legal requirement for the content of the EIA (environmental impact assessment) documentation (Art. 4.1)?

2. Many respondents referred to legislation defining the required content of the EIA documentation (Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Germany, Hungary, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Romania, Slovenia, Switzerland,

Ukraine, United Kingdom). Others provided direct quotation of the legislation (Austria, Finland, Lithuania, Moldova, Norway, Poland, Slovakia, Sweden, Turkmenistan), whereas France, Kazakhstan and Spain summarized the key contents. Estonia and the Netherlands explained how the contents were determined. Armenia had legislation partially and indirectly defining the content, with reference also being made to the Convention's provisions. Azerbaijan had no legislation, but referred to European Union (EU) legislation and to the Convention.

Question 18. Describe your country's procedures for determining the content of the EIA documentation (Art. 4.1).

3. To determine the content of the EIA documentation, respondents indicated that either the proponent or its experts (Austria, Bulgaria, Finland, Germany Lithuania, Norway, Switzerland, United Kingdom) or the competent authority (Czech Republic, Latvia, Liechtenstein, Netherlands, Poland, Slovakia, Spain, Sweden) undertook the scoping. In Hungary, the competent authority prepared the scope on the basis of the preliminary environmental assessment submitted by the proponent, whereas in Norway it was on the basis of a draft scope prepared by the proponent. When prepared by the proponent, the competent authority then expressed its opinion (Austria, Bulgaria, Finland, Germany) or gave its approval (Estonia, Lithuania) on the scope prepared by the proponent; in Austria, the competent authority had three months to give its opinion; in Bulgaria, only one month. In the United Kingdom, there was a possibility of the competent authority expressing its opinion. In France, the proponent might ask the competent authority for advice on additional elements to be included in the EIA documentation.

4. Where the competent authority prepared or commented on the scope, respondents indicated input from relevant authorities (Finland, Hungary, Latvia, Liechtenstein, Netherlands, Norway, Romania, Slovakia, Spain), the public (Finland, Netherlands, Norway, Slovakia), public organizations or NGOs¹ (Hungary, Spain), and the affected Party (Finland, Poland, Romania, Slovakia). In Lithuania, the views of the relevant authorities on the scope, prepared by the proponent, also had to be sought and addressed. Many countries referenced legislation, though Croatia noted that it had no scoping procedure at that time. Italy, Kazakhstan and Ukraine each presented an outline scope.

Question 19. How do you identify "reasonable alternatives" in accordance with Appendix II, alinea (b)?

5. "Reasonable alternatives" were identified case-by-case (Austria, Czech Republic, Estonia, France, Norway, Slovakia) or based on guidelines (Romania). Slovakia indicated a role for various authorities, the public and the affected Party in identifying alternatives. In addition, "reasonable alternatives" were:

- (a) Feasible, possible, practical, realistic or viable (Armenia, Estonia, Kyrgyzstan, Latvia, Moldova, Norway, Poland);
- (b) Normally (with exceptions requiring justification) compliant with land-use plans (Czech Republic)

¹ Non-governmental organizations.

- (c) Economically and environmentally compatible (Ukraine);
- (d) Requiring little additional expense and resulting in major environmental benefits (Azerbaijan);
- (e) Satisfying the project objectives (Armenia, Estonia, Netherlands, Poland);
- (f) Reducing or taking into account the environmental impact (Bulgaria, Netherlands, Poland, Slovenia);
- (g) Within the competence of the proponent (Netherlands);
- (h) Simply those alternatives examined (Kazakhstan, Liechtenstein, United Kingdom).

6. The Czech Republic, Estonia, Kazakhstan and Lithuania listed many types of alternatives; Finland, Kazakhstan, Kyrgyzstan and Moldova highlighted the “no project” alternative. Croatia highlighted technological alternatives, Germany noted technological and locational or routing alternatives, and Turkmenistan identified both socio-economic and locational ones, but Germany and Norway indicated that the types of alternative depended on the type of project. Austria and Germany noted greater consideration of alternatives for infrastructure projects. Finally, in Hungary, the consideration of alternatives was not mandatory, only desirable, whereas Lithuania indicated that several alternatives had to be investigated and in Slovakia at least two.

Question 20. How do you identify “the environment that is likely to be affected by the proposed activity and its alternatives” in accordance to Appendix II, alinea (c), and the definition of “impact” in Article 1(vii)?

7. To identify the environment that is likely to be affected, some respondents referred to definitions in national legislation (Croatia, Finland, Sweden), the EU Directive on EIA (Cyprus) or the Convention (Armenia, Azerbaijan, Netherlands, United Kingdom); France referred to a definition of environmental components in its legislation; Turkmenistan provided a detailed description, Kazakhstan and Ukraine shorter ones. Several countries reported a case-by-case identification while preparing the EIA documentation (Estonia, France, Germany, Italy, Latvia, United Kingdom) or the scope (Romania, Slovakia, Switzerland), whereas Bulgaria made reference to the characteristics of the proposed activity and location. Respondents also indicated identification of the affected environment by the competent authority in consultation with other authorities (Liechtenstein) or with the affected Party (Austria, possibly; Norway); the Czech Republic indicated that the proponent identified the area of impact, but the competent authority might have altered it; Finland, Lithuania and Switzerland reported that the proponent was responsible; Slovakia noted comments and requirements by the authorities, the public and the affected Party. Finally, Hungary described the method of identification in its legislation.

8. Regarding the definition of the “impact”, Croatia and Finland referred to definitions in their legislation and Cyprus to a definition in the EIA Directive. Estonia, France, Italy and Latvia reported case-by-case definition while preparing the EIA documentation, Ukraine again provided a brief definition.

Question 21. Do you give the affected Party all of the EIA documentation (Art. 4.2)? If not, which parts of the documentation do you provide?

9. Countries reported providing all EIA documentation to the affected Party (Germany, Switzerland, United Kingdom):

- (a) Subject to any privacy or access to information restrictions (Austria, Bulgaria, Canada);
- (b) Available (Croatia, Cyprus); including views of the public (Czech Republic);
- (c) With detailed information being sent upon request (Denmark, Estonia, France, Hungary, Italy);
- (d) Including any research results (Kyrgyzstan);
- (e) Though some materials were only available in Latvian (Latvia);
- (f) Generally in Lithuanian, Russian and English, and at least the non-technical summary and the transboundary impacts chapter (Lithuania);
- (g) Except non-relevant detailed expert reports (Netherlands, Norway);
- (h) Except confidential material (Romania);
- (i) In general (Slovakia, Spain);
- (j) When in Swedish, otherwise subject to discussion with the affected Party and the project proponent (Sweden).

10. Poland indicated that it sent only that part of the documentation required by the affected Party to assess the impact on its territory. Finland sometimes translated the whole EIA documentation, but more often only the parts concerning the project and its transboundary impact were translated and sent. Moldova simply noted that the notification in conformity with national legislation. Slovenia reported that it would provide the information specified in Appendix II. Ukraine sent sufficient information (the summary).

Question 22. How is the transfer and reception of the comments from the affected Party organized? How does the competent authority in your country (as the Party of origin) deal with the comments? (Art. 4.2)

11. Comments were transferred:

- (a) Directly to the competent authority in the Party of origin (Austria, Denmark, Germany, Netherlands, Norway, Poland, Switzerland, United Kingdom), and to the point of contact (Denmark) or to the ministry of environment (Norway), or via the ministry of environment (Moldova, Poland);
- (b) Via an authority in the affected Party (Austria; Estonia, in a bilateral agreement; Romania);
- (c) Via the points of contact (Bulgaria; Finland; United Kingdom, where this was the preferred approach);
- (d) At the regional (*département*) level (France);
- (e) Through the local embassy to the competent authority in the Party of origin (Italy);
- (f) Between the ministries of environment (Czech Republic, Hungary);
- (g) Through the embassy and the Ministry of Foreign Affairs (Ukraine).

12. Some other countries organized the transfer case by case, by the points of contact, the competent authorities or other relevant authorities in the concerned Parties (Canada, Croatia, Latvia, Slovenia).

13. These comments were taken into account in the decision (Bulgaria; Denmark; Germany; Italy; Poland; Sweden, at the permitting stage; Switzerland; United Kingdom), in the same way as domestic comments (Austria, France, Hungary, Norway, Slovakia). In other Parties, the comments were forwarded to the proponent and its experts (Estonia, Hungary, Lithuania), who took them into account in revising the EIA documentation (Estonia; Hungary; Kyrgyzstan, for well-founded comments as determined by the expert review committee; Moldova; Spain; Sweden, at the notification or scoping stage), and who responded to the affected Party (Estonia). Croatia explained that only “environmental comments” were taken into account and forwarded to the proponent. In the Czech Republic, it was the Ministry of Environment that revised the EIA documentation. In Finland, such comments were treated in the same way as domestic comments and were taken into account by the competent authority in its review of the EIA documentation. The Netherlands required a statement explaining how comments, whatever their source, had been taken into account. In Hungary, the competent authority had been able to order additional studies on the basis of comments received from the affected Party or its public. Romania, as Party of origin, responded to the comments and sent the comments and responses to the affected Party, the proponent and the relevant domestic authorities. Finland provided similar information to the affected Party.

Question 23. Describe the procedures and, where appropriate the legislation you would apply to determine the time frame for comments provided for in the words “within a reasonable time before the final decision” (Art. 4.2)? What is the consequence if the affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?

14. Some respondents referred to the application of the time frame: for domestic consultations (Denmark, normally; France; Norway; Switzerland), applied flexibly (Spain, United Kingdom); as agreed by the points of contact taking into account national legislation (Croatia); or as agreed between the concerned Parties (Armenia; Estonia; Sweden, with the proponent too). Estonia also gave the example of a bilateral agreement specifying a time frame of two months; Poland gave a similar example of 90 days. The 90-day time frame was applied by Austria in all cases and normally by Romania, the Czech Republic noted 60 days, Germany six weeks to two months, Kyrgyzstan three months, Norway not less than six weeks, Latvia 20–40 days, Slovakia eight weeks and Slovenia 30 days (but not set in law). Bulgaria, however, allowed only seven days. Italy’s legislation set the time frame; in the Netherlands, the duration depended on which legislation applied, but was at least four weeks. In Hungary, 120 days were allowed for the entire permitting procedure. Canada noted that public participation had to be well in advance of the decision, the Netherlands that comments had to be able to influence the decision, and the United Kingdom indicated that the time frame had to comply with good administrative practice. Finland indicated that comments were requested in good time for the decision: comments from the public usually during one month after the public hearing, and a statement from the competent authority of the affected Party within two months of the public hearing.

15. The consequence of the affected Party not complying with the time frame included:
- (a) No consequence (Croatia) if only a few days (Estonia) or if comments still arrived before the decision was taken (Hungary) and they provided important and relevant new information (Germany);
 - (b) The same as for domestic comments (Norway);
 - (c) Comments could or might not have been taken into consideration (Denmark, Netherlands, Switzerland);
 - (d) The final decision might not take into account the interests of the affected Party (Kyrgyzstan);
 - (e) It might delay decision-making, fail to influence decision-making, inadvertently withhold relevant information, fail to represent the public's views or add to the cost of the procedure, if re-opened (United Kingdom).
16. The Czech Republic would have tried to take late comments into account. In Romania, this might have been taken to indicate that there were no comments, whereas Sweden and the United Kingdom would have reminded the affected Party and the latter would have offered a short extension. If an affected Party asked for an extension of a deadline, countries would have:
- (a) Agreed or normally agreed (Croatia, Norway, Slovenia, Sweden, Switzerland);
 - (b) Agreed in consultation with the proponent (Estonia);
 - (c) Agreed if the request was justified (France, Lithuania, Poland) and national interests allow (Kyrgyzstan) or subject to good administrative practice (United Kingdom);
 - (d) Considered (Italy);
 - (e) Agreed if the legislation or administrative or decision-making procedure permitted (Czech Republic, Denmark, Finland, Netherlands, Poland, Romania).
17. An extension was usually not possible because of the deadlines set in Germany's legislation, but in Hungary it was possible to suspend the procedure if requested. Finally, both the consideration of late comments and the possibility of an extension were determined case by case in Slovakia.

Question 24. What material do you provide, together with the affected Party, to the public of the affected Party?

18. This question was interpreted in diverse ways. However, examples included:
- (a) Prior information on a potential project (United Kingdom);
 - (b) Public notices (Canada);
 - (c) The project application or notification (Austria, Czech Republic, Finland, Germany, Hungary, Kyrgyzstan, Netherlands, Norway, Poland, Slovenia);
 - (d) The project description or documentation (Bulgaria, Croatia, Latvia, Poland, Romania, Slovenia, Switzerland, United Kingdom);
 - (e) Procedural information, including on how to comment (Netherlands);
 - (f) The screening report (Canada);
 - (g) The scoping report (Canada, Estonia, Lithuania);

- (h) The preliminary environmental assessment (Hungary);
- (i) The EIA documentation prepared by the proponent (Austria; Bulgaria; Canada; Czech Republic; Estonia; Finland, possibly; Germany; Hungary; Kyrgyzstan, when necessary; Latvia; Lithuania; Netherlands; Norway; Slovenia; Switzerland; Ukraine; United Kingdom);
- (j) The (translated) description of the potential transboundary impact (Bulgaria, Finland, Germany, Hungary, Poland, United Kingdom);
- (k) The (translated) non-technical summary (Germany, Hungary, Kyrgyzstan, Lithuania, Netherlands, Poland);
- (l) Additional studies (Germany)
- (m) Other materials for public discussion (Latvia);
- (n) The conclusion of a fact-finding procedure (Czech Republic),
- (o) The review of the EIA documentation, or State environmental review, by the authorities or experts (Austria, Canada, Czech Republic, Finland, Slovenia, Ukraine);
- (p) The decision (in part) on the application or permit (Austria, Canada, Germany, Hungary, Poland);
- (q) The decision on appeals, etc. (Hungary);
- (r) Monitoring reports (Canada);
- (s) Other documents (Canada).

19. In addition, France, Moldova and Sweden indicated that this was a matter for the affected Party, whereas Canada, Denmark, Germany, Italy and Slovakia reported that all information available domestically was also available to the affected Party and its public.

Question 25. Do you initiate a public hearing for the affected public, and at what stage, whether in the affected Party, in your country or as a joint hearing? If a public hearing is held in your country, as Party of origin, can the public of the affected Party, public authorities, organizations or other individuals come to your country to participate?

20. Respondents provided information on public hearings for the affected public, though Cyprus reported that there was no obligation for such a hearing, Finland that hearings were not always necessary, and Italy that public hearings were not foreseen by legislation, but might have been provided for in bilateral agreements. Germany, Slovakia and Ukraine had a legal requirement for a public hearing. For Austria, public hearings might have been held in the affected Party, in the Party of origin or as a joint hearing.

21. A public hearing might have been held in the affected Party:

- (a) Depending on the project type, on the need for translation and on the number of affected people in the affected Party (Austria);
- (b) As agreed between the concerned Parties on a case-by-case basis or defined in bilateral agreements (Bulgaria);
- (c) As agreed by the concerned Parties and the proponent (Switzerland), in either Party (Finland)
- (d) In agreement with the affected Party and in line with national legislation (Croatia);

- (e) Organized by the affected Party (Estonia, Lithuania) under a bilateral agreement (Hungary);
- (f) Organized by the competent authority (Norway).
- (g) As determined case by case (Slovakia).

22. Kyrgyzstan and Latvia indicated that a public hearing would generally have been held in the affected Party, Romania reported that it would have been willing to participate in such a hearing. However, the Czech Republic, Hungary, Lithuania, Moldova, the Netherlands, Poland and Sweden would not, as Parties of origin, have organized a public hearing in the affected Party as this was the affected Party's responsibility. However, Sweden had organized such a hearing in another Party. Germany reported that this might occur if there was very close cooperation between the Parties concerned.

23. Bulgaria indicated that a joint hearing might have been held for a joint EIA, Denmark that public hearings were initiated jointly in either Party, and Switzerland that joint hearings would normally be held in the Party of origin, whereas the United Kingdom reported that joint hearings were not anticipated. A public hearing might have been held in Austria as Party of origin if necessary and in cooperation with the affected Party. Several respondents indicated that the public of the affected Party, public authorities, organizations or other individuals might have come to their country, as Party of origin, if a public hearing was held there (Bulgaria, Croatia, Czech Republic, Denmark, France, Germany, Kyrgyzstan, Moldova, Netherlands, Poland, Romania, Slovakia, Sweden, Switzerland, United Kingdom), subject to normal entry requirements (Canada), or without cost to the proponent or the authorities in the Party of origin (Hungary).

B. Questions to the affected Party

Question 26. Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of the words "within a reasonable time before the final decision", this being the time frame for comments (Art. 4.2)?

24. In their role of affected Party, respondents indicated how they determined the meaning of "within a reasonable time before the final decision". Some required respect of the deadline set by the Party of origin (Poland, Romania, Switzerland, United Kingdom), with Austria, Germany and Sweden referring to the legislation of the Party of origin. Romania and the United Kingdom requested an extension if there was insufficient time. In Austria, after submission of the comments, there still had to be enough time for consultations and the time frame depended on the project type, the complexity of its impacts and its political importance. Bulgaria indicated that the time frame was determined case by case or through bilateral agreement. In Armenia, Estonia and Slovenia the concerned Parties agreed together on the time frame, whereas in Croatia it was any period agreed to by the Party of origin. Azerbaijan referred to subregional (Caspian Sea) guidance. The Czech Republic, while referring to the deadline set by the Party of origin, noted a 15-day period for commenting on published information and a 30-day period after publication for responding to the Party of origin. Denmark referred to its legislation and noted that the time frame was usually the same as for domestic comments. Finland assumed that the Party of origin would provide a reasonable time frame. The Netherlands and Norway simply indicated that it was the same as when they were Party of origin (see Question 23). Kazakhstan

referred to the period for the State environmental expert review, as defined in its legislation. Slovakia's legislation provided eight weeks, but the period for commenting might be reduced in line with justified requirements of the Party of origin. Finally, in Cyprus it could have been up to thirty days, in Moldova it was thirty days, in Hungary it needed to be at least 30 days and in Kyrgyzstan not more than three months.

Question 27. Who is responsible for the organization of the public participation in the affected Party? Is the public participation normally organized in accordance with your legislation as the affected Party, or with the legislation of the Party of origin, or with ad hoc procedures, or with bilateral or multilateral agreements?

25. Respondents organized public participation in their country, as the affected Party, in accordance with: their legislation (Armenia; Bulgaria; Croatia; Czech Republic; Denmark; Estonia; France; Hungary; Kazakhstan; Lithuania; Poland and Switzerland, but within the time frame set by the Party of origin; Romania; Slovenia; The former Yugoslav Republic of Macedonia; United Kingdom); the legislation of the Party of origin (Austria; Czech Republic, as well; Estonia; Germany, usually; Netherlands); bilateral or multilateral agreements (Bulgaria, Estonia, Finland, Latvia, Lithuania, Netherlands, The former Yugoslav Republic of Macedonia); or case-by-case arrangements (Finland, Italy, Latvia, Norway, Romania, Sweden). In Kazakhstan, the local authorities organized the public participation, whereas in the Czech Republic and Slovenia it was the Ministry of Environment, in Germany the competent authority for that type of project, in Kyrgyzstan the relevant environmental authorities, and in Moldova and Slovakia the local authorities together with the Ministry. Denmark noted the involvement of the Party of origin.

II. ARTICLE 5: CONSULTATIONS

A. Questions to the Party of Origin

Question 28. At which step of the EIA procedure does the consultation in accordance with Article 5 generally take place? Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of "undue delay", with regard to the timing of entry into consultation? Do you normally set the duration for consultations beforehand? If there seems to be no need for consultation, how do you determine not to carry out consultations?

26. Many respondents misunderstood this question. However, others indicated the step or steps of the EIA procedure at which the consultation occurred:

- (a) Without delay after sending the notification (Italy);
- (b) During scoping (Romania; Switzerland, preferably);
- (c) During preparation of the EIA documentation (Bulgaria, Croatia, Latvia);
- (d) Once the EIA documentation had been prepared (Hungary, Kyrgyzstan, Netherlands, Poland, Romania, Spain, Sweden, United Kingdom);
- (e) Within twenty days of receiving the EIA documentation (Czech Republic);
- (f) Once the EIA documentation had been evaluated (Austria, Bulgaria);
- (g) Once the environmental impact statement has been sent (Kyrgyzstan);

- (h) When requested by the affected Party (Estonia).

27. Germany and Poland noted that consultations were more efficient if held after the affected Party had commented on the EIA documentation. However, consultations might occur at any stage in Germany and Slovakia. Austria, the Czech Republic, Estonia, Lithuania, Romania and Slovenia set the duration for consultations beforehand, whereas Croatia did not. Finland set the time frame when sending the EIA documentation, referring to its legislation. Kyrgyzstan noted a maximum period of three months. Such consultations should always have been initiated in Hungary, whereas Croatia indicated that consultations need not have been initiated if no impact appeared likely.

Question 29. On what level do you arrange for consultation: national, regional or local? Who usually participates in the consultation? Describe the responsibilities of the authorities involved. By what means do you usually communicate in consultations, for example by meeting, exchange of written communications?

28. Consultations were held at different levels in the countries when they were the Party of origin:

- (a) At the national or federal level (Bulgaria; Canada; Croatia; Cyprus; Czech Republic; Estonia; Germany; Hungary; Kyrgyzstan; Liechtenstein; Lithuania; Romania; Slovakia; Spain; Switzerland, possibly);
- (b) At the regional, State or local levels as well, if appropriate (Bulgaria, Canada, Germany, Kyrgyzstan, Switzerland);
- (c) At the expert level, with relevant authorities if problems remained unresolved (Denmark, Netherlands);
- (d) At the level appropriate for the project type (France, Italy, Latvia, Poland, United Kingdom).

29. Various participants were identified:

- (a) National or federal authorities (Bulgaria; Canada; Croatia; Estonia; Germany; Hungary; Kyrgyzstan; Liechtenstein; Moldova; Romania; Slovakia; Slovenia; Spain; Switzerland, possibly; United Kingdom);
- (b) Regional, State or local authorities (Bulgaria, Canada, Germany, Kyrgyzstan, Moldova, Slovenia, Switzerland, United Kingdom);
- (c) Competent authorities (Denmark, Germany, Slovakia, Slovenia);
- (d) Aboriginal representatives (Canada);
- (e) Experts (Canada, Denmark, Switzerland, United Kingdom);
- (f) The project proponent (Canada, Romania, Slovakia, Switzerland);
- (g) The (concerned) public, or its representatives (Bulgaria, Croatia, Italy, Moldova, United Kingdom);
- (h) Other stakeholders (Croatia);
- (i) Anyone concerned (Cyprus).

30. In such consultations, the environmental authorities provided information or clarified requirements (Bulgaria), or provided coordination and organized the consultation (Romania). The consultations were made by:

- (a) Exchanging written communications (Bulgaria, Czech Republic, Denmark, Finland, Germany, Lithuania, Netherlands, Romania, Slovenia, Spain, Switzerland, United Kingdom);
- (b) Telephone (Denmark, Kyrgyzstan, United Kingdom);
- (c) Meetings between the concerned Parties (Bulgaria, Czech Republic, Denmark, Germany, Lithuania, Netherlands, Slovenia, Switzerland);
- (d) Internet (Kyrgyzstan, Slovenia, Switzerland).

B. Questions to the affected Party

Question 30. On what level is the consultation normally held: national, regional or local? Who normally participates in the consultation? By what means do you usually communicate in consultations, for example by meeting or by the exchange of written communications? How do you indicate if there is no need for consultations?

31. When countries were the affected Party, the consultations were also held at various levels:

- (a) Depending on the nature and the potential impact of the proposed activity (Bulgaria, France, Latvia), though often at the local level (France);
- (b) As determined case by case (Kazakhstan, Moldova);
- (c) At all levels (Croatia);
- (d) At the expert level at first (Denmark, Netherlands);
- (e) At the national level (Cyprus, Czech Republic, Estonia, Hungary, Poland, Romania, Slovakia, The former Yugoslav Republic of Macedonia), if problems were unresolved (Denmark, with consultations at the local level too; Netherlands);
- (f) At federal and State levels (Germany);
- (g) At the regional level (Hungary, Poland).

32. The participants included the proponent (Austria) and the competent authority of the Party of origin (Austria, Netherlands) and from the affected Party:

- (a) The point of contact or ministry of environment (Austria; Denmark; Estonia; Netherlands; Norway; Poland; Slovakia; Switzerland, possibly; United Kingdom);
- (b) Competent authorities (Bulgaria, Germany, Hungary, Latvia, Liechtenstein, Slovenia, Switzerland);
- (c) Relevant local and national authorities (Bulgaria, Croatia, Denmark, Estonia, Germany, Hungary, Netherlands, Norway, Poland, Romania, Slovenia, Switzerland, United Kingdom);
- (d) Experts (Denmark, Poland, Switzerland);
- (e) The public (Bulgaria);
- (f) NGOs (Bulgaria, United Kingdom);
- (g) Other stakeholders (Croatia);

- (h) Anyone concerned (Cyprus).
33. Communications were:
- (a) In writing (Bulgaria; Croatia; Czech Republic; Denmark; Germany; Hungary; Italy; Latvia; Netherlands; Norway; Romania; Spain; Sweden; Switzerland; United Kingdom, usually);
 - (b) In meetings (Austria, Bulgaria, Croatia, Denmark, Germany, Hungary, Latvia, Netherlands, Poland, Romania, Switzerland);
 - (c) By other means, e.g. telephone, fax or e-mail (Denmark, Latvia, Switzerland);
 - (d) As agreed by the concerned Parties (Slovenia).
34. Finland, Germany, Norway, Poland and Romania would have written to indicate whether there was a need for consultations.

III. ARTICLE 6: FINAL DECISION

A. Questions to the Party of Origin

Question 31. Describe what is regarded as the “final decision” to authorize or undertake a proposed activity (Art. 2.3). Do all projects listed in Appendix I require such a decision?

35. Respondents described the “final decision” as:
- (a) The decision in the consolidated permit procedure, except for federal roads and high-speed railways, which required two decisions (Austria);
 - (b) The decision of the whole State expert review (Azerbaijan, Ukraine), dependent of a positive State environmental expert review decision (Moldova);
 - (c) Generally the “visa for design” issued by the chief architect of the municipality (Bulgaria);
 - (d) The decision on the acceptability of the proposed activity in view of its environmental impact (Croatia) and of the opinions obtained (The former Yugoslav Republic of Macedonia);
 - (e) The final decision taken by the responsible planning authorities, after assessment of the EIA documentation and preparation of the opinion on the environmental assessment (Cyprus);
 - (f) The decision on the proposal, dependent on the environmental impact statement (Slovakia), generally with conditions as defined in the statement (Czech Republic);
 - (g) The decision granting (or refusing) a permit (Denmark, Finland, Germany, Sweden), development consent (Estonia, France, Germany, Latvia), or authorization (Switzerland). The decision on the EIA could have been taken separately in Sweden;
 - (h) The decision by the environmental authority on the basis of the EIA documentation and the comments by the affected Party (Kyrgyzstan);
 - (i) The decision on whether the proposed activity, given its nature and environmental impact, may be carried out at the chosen site (Lithuania);
 - (j) The decision on the environmental conditions for consent (Poland);

- (k) The decision on the environmental permit or agreement, a precondition for the building permit (Hungary, Romania, Slovenia);
- (l) The decision permitting other legal decisions, legally binding plans (spatial, land-use, regional), route adoption, etc. (Netherlands).

36. In Norway, the final decision was a decision following a procedure in the planning and building act or other sectoral acts; when two or more acts were involved, each had a decision and it varied which was the “final decision”. Kazakhstan noted that a positive conclusion of the State environmental expert review was a pre-condition for the decision. All projects listed in Appendix I required such a decision in most Parties (Austria; Azerbaijan; Croatia, except for deforestation of large areas; Denmark; Estonia; Finland; France; Germany; Hungary; Kazakhstan; Kyrgyzstan; Liechtenstein; Lithuania; Moldova; Netherlands; Norway; Poland; Romania; Slovenia, Spain; Switzerland; Ukraine). Most of the projects listed required such a decision in Sweden.

Question 32. How does the EIA procedure (including the outcome) in your country, whether or not transboundary, influence the decision-making process for a proposed activity? (Art. 6.1)

37. Bulgaria, Hungary and Romania indicated that the EIA decision or agreement was required for development consent, as was, in Armenia, Azerbaijan and Kazakhstan, a positive conclusion of the expert review of the EIA documentation. The decision took into account, took into consideration or was informed by the EIA procedure or documentation in most Parties (Austria, Canada, Croatia, Cyprus, Czech Republic, Finland, Estonia, Germany, Italy, Latvia, Lithuania, Netherlands, Norway, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, United Kingdom). The State environmental review was a component of the whole State expert review in Ukraine. Countries identified in particular the relevance of:

- (a) The results of consultations, including public comments (Austria, Estonia, Italy, Latvia, Lithuania, Netherlands, Norway, Poland, The former Yugoslav Republic of Macedonia, United Kingdom);
- (b) The results of transboundary consultations (Czech Republic, France, Germany, Lithuania, Netherlands, Poland);
- (c) The examination of alternatives (Netherlands).

38. In the United Kingdom, a decision to refuse development consent could be taken without reference to the EIA documentation. Norway noted that EIA helped in the identification of better alternatives and mitigation measures, but that it was not as an efficient aid to deciding on whether a project should proceed. Germany also noted the importance of mitigation measures. There was no influence in Liechtenstein.

Question 33. Are the comments of the authorities and the public of the affected Party and the outcome of the consultations taken into consideration in the same way as the comments from the authorities and public in your country (Art. 6.1)?

39. In most Parties, comments by the authorities and the public of the affected Party, and the outcome of the consultations, were taken into consideration in the same way as the comments

from the authorities and public in their country as the Party of origin (Austria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Italy, Kyrgyzstan, Lithuania, Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom). Canada indicated that it would likely give equal consideration. Bulgaria, Kazakhstan, Latvia and Moldova did not explicitly indicate whether equal consideration was given. A summary of domestic and transboundary comments was included in the permit application in Finland, to be taken into account by the permit authority in its decision.

Question 34. How is the obligation to submit the final decision to the affected Party normally fulfilled? Does the final decision contain the reasons and considerations on which the decision is based? (Art. 6.2)

40. Most Parties (Austria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Moldova, Norway, Poland, Romania, Slovakia, Slovenia, Sweden, Ukraine, United Kingdom) submitted the final decision to the affected Party, with Germany noting translation where possible and Sweden where necessary. Hungary, Latvia and Ukraine indicated the bodies involved. Most Parties (Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Kyrgyzstan, Latvia, Lithuania, Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Sweden, Switzerland, Ukraine, United Kingdom) also indicated that the final decision contained the reasons and considerations on which the decision was based.

Question 35. If additional information comes available according to paragraph 3 before the activity commences, how do you consult with the affected Party? If need be, can the decision be revised? (Art. 6.3)

41. If additional information became available before the activity began, a number of Parties would have informed or consulted the affected Party (Cyprus; Czech Republic; Estonia; Germany; Kyrgyzstan; Netherlands; Norway, if of relevance to comments made by the affected Party; Romania), or the decision or the environmental permit could have been revised (Croatia, Estonia, Finland, Germany, Hungary, Kyrgyzstan, Moldova, Netherlands, Romania, Slovakia, Slovenia, United Kingdom).

IV. ARTICLE 7: POST-PROJECT ANALYSIS

Question 36. How do you determine whether you should request a post-project analysis to be carried out (Art. 7.1)?

42. Some respondents reported that post-project analysis should always have been carried out: Austria, Bulgaria, Croatia, Slovakia and (though optional in practice) the Netherlands. In other countries, post-project analysis was carried out:

- (a) Usually and according to bilateral agreements, in consultation with the affected Party (Estonia);
- (b) Depending on whether a significant environmental impact was expected (Estonia, Romania);

- (c) Depending on the type of activity (France, United Kingdom) and the technology used (Romania);
- (d) As determined case by case (Kazakhstan, Moldova);
- (e) Depending on the distance from the border (Romania);
- (f) Depending on the decision of the competent authority (Germany, Norway, Switzerland), possibly in consultation with the affected Party (Hungary); or
- (g) As defined by the (domestic) EIA procedure (Azerbaijan, Czech Republic, Latvia, Lithuania, Spain).

43. Italy decided on whether to carry out such an analysis if requested by the affected Party. In Slovenia, such an analysis was carried out before operations began and was a condition on the operating permit.

Question 37. Where, as a result of post-project analysis, it is concluded that there is a significant adverse transboundary impact by the activity, how do you inform the other Party and consult on necessary measures to reduce or eliminate the impact pursuant to Article 7, paragraph 2?

44. Some respondents confirmed that there would have been an exchange of information between the concerned Parties in this situation (Cyprus, Czech Republic, Estonia, France, Latvia, Netherlands, Poland, Romania), through the focal points (Croatia, United Kingdom). Respondents also reported that additional consultations (Croatia, Italy, Latvia, Netherlands, Poland, Romania, Slovenia), according to a bilateral agreement (Estonia), would have been held on necessary measures to reduce or eliminate the impact. Others indicated that arrangements would have been determined case by case (Canada, Hungary, Latvia, Lithuania).

V. ARTICLE 8: BILATERAL AND MULTILATERAL AGREEMENTS

Question 38. Do you have any bilateral or multilateral agreements based on the EIA Convention (Art. 8, Appendix VI)? If so, list them. Briefly describe the nature of these agreements. To what extent are these agreements based on Appendix VI and what issues do they cover? If publicly available, also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.

45. Respondents reported the following general agreements based on, or related to, the Convention, besides numerous project-specific agreements:

- (a) Convention for the Protection and Sustainable Use of the Waters of the Spanish-Portuguese Hydrological Catchments (Albufeira Convention, 1998);
- (b) Agreement between Austria and Slovakia (2004);
- (c) Agreement between Estonia and Finland (2002);
- (d) Agreement between Estonia and Latvia (1997);
- (e) Guidelines of the French-German-Swiss Governmental Commission for the Upper Rhine (2005, replacing 1996 “Tripartite Recommendations”);
- (f) Recommendations of the French-German-Luxembourg Governmental Commission (1986 “Saar-Lor-Lux Recommendation”);

- (g) Common Declaration between Germany and the Netherlands (entered into force in 2005);
- (h) Agreement between Germany and Poland (2006, but yet to enter into force; see also earlier agreement on cooperation in environmental protection);
- (i) Agreement between Lithuania and Poland (2004);
- (j) (Possibly draft) informal trilateral guideline between Austria, Liechtenstein and Switzerland, possibly to be extended to other countries.

46. Agreements had also been drafted:

- (a) Between Austria and the Czech Republic;
- (b) Between the Czech Republic and Germany (see also earlier agreement on cooperation in environmental protection);
- (c) Between the Czech Republic and Poland;
- (d) Between the Czech Republic and Slovakia;
- (e) Between Flanders (Belgium) and the Netherlands;
- (f) Between Hungary and Slovakia;
- (g) Between Poland and Slovakia;
- (h) Among the countries of South-Eastern Europe.

47. In addition, a possible informal agreement between Austria, Germany, Liechtenstein and Switzerland, and a possible common declaration between Denmark and Germany were reportedly planned.

48. Furthermore, Denmark held annual meetings with Germany and with Sweden to discuss transboundary EIA of certain types of projects.

Question 39. Have you established any supplementary points of contact pursuant to bilateral or multilateral agreements?

49. No such supplementary points of contact had been established in most Parties (Austria, Azerbaijan, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Moldova, Norway, Romania, Slovakia, Slovenia, Sweden, Switzerland, Ukraine). However, such points of contact had been established in Armenia, the Netherlands and Poland. Germany planned to do so further to its agreement with Poland. Spain reported that a commission had been established to implement the above-mentioned Albufeira Convention. No supplementary points of contact had been established in the United Kingdom, but that informal working agreements and contacts had developed between staff in Northern Ireland (United Kingdom) and their counterparts in Ireland.

VI. ARTICLE 9: RESEARCH PROGRAMMES

Question 40. Are you aware of any specific research in relation to the items mentioned in Article 9 in your country? If so, describe it briefly.

50. Relevant research was reported as follows, with full titles provided in the completed questionnaires:

- (a) Practical results of EIA procedures (Austria);
- (b) The effects of hydrocarbon development and production (Azerbaijan);
- (c) Climate change and environmental assessment; follow-up; regional environmental effects frameworks; significance (Canada);
- (d) Improving EIA (Croatia);
- (e) The effects of offshore wind farms (Denmark);
- (f) Review of EIA Practice (Estonia);
- (g) Cooperation with Poland in transboundary EIA; evaluation of federal EIA legislation (Germany);
- (h) Comparative review of national and transboundary EIA procedures (Hungary);
- (i) The effects of wind farms on birdlife; guidance on health in EIA; alternatives to road building (Norway);
- (j) Information system on EIA procedure (Slovakia);
- (k) Contribution of scoping to the effectiveness of EIA (United Kingdom);
- (l) Study and guidance on the assessment of indirect and cumulative impacts and impact interactions; strategy for EIA and strategic environmental assessment (SEA) research in the European Union; the relationship between the EIA and SEA (2001/42/EC) Directives; guidance on screening; guidance on scoping; review check list; interrelation between the Integrated Pollution Prevention and Control (96/61/EC), EIA and Seveso (96/82/EC and 2003/105/EC) Directives and the Eco-Management and Audit Scheme Regulation (1836/93); evaluations of the performance of the EIA process; costs and benefits in EIA and SEA (European Commission).

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